SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 559

THE UNITED STATES, PETITIONER,

vs.

THE WESTERN PACIFIC RAILROAD COMPANY, BANGOR AND AROOSTOOK RAILROAD COMPANY, AND SEABOARD AIR LINE RAILROAD COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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1 In the United States Court of Claims

No. 42-54

THE WESTERN PACIFIC RAILROAD COMPANY

v.

THE UNITED STATES

PETITION—Filed January 29, 1954

To the Honorable Chief Judge and Associate Judges of the United States Court of Claims:

The plaintiff, The Western Pacific Railroad Company, respectfully represents:

1. Plaintiff is a corporation organized and existing under the laws of the State of California and is a common carrier by railroad in interstate commerce over its own lines and jointly with other carriers.

2 2. From 1947 to 1950, inclusive, plaintiff performed transportation services for the defendant, over its own lines and jointly with other carriers whose lines connect with the plaintiff's lines, by carrying a number of shipments of articles described as incendiary bombs or gas bombs.

3. For the transportation services rendered, the charges claimed by the plaintiff are on the basis of classification of the articles shipped as Bombs, Incendiary, pursuant to Item 1820 of the Consolidated Freight Clasification No. 17, and the rates applicable thereto. The settlements made by the General Accounting Office are on the basis of lower rates made under Rule 18 of Consolidated Freight Classification No. 17. Further details of the said shipments, with references to the bills of lading, dates of shipments, plaintiff's bill numbers, the transportation charges billed and paid, are shown in the attached statement, Schedule A, which is made part hereof.

4. Plaintiff avers that the correct and lawful transportation charges on the said shipments are as stated in Schedule A hereto, that the defendant has refused and failed to pay the correct and lawful charges as stated, and that there is due and owing plaintiff from the United States a balance of $17,710.28.

5. Plaintiff further avers that no action or suit has been commenced or is pending in any other court on account of this claim; that no action has been had thereon in Congress or by any of the executive departments or agencies other than as herein stated;

that plaintiff is the owner of the claim herein stated and that no assignment or transfer of the whole or any part thereof or any interest therein has been made.

3-4 WHEREFORE, plaintiff prays judgment against the defendant in the sum of $17,710.28.

THE WESTERN PACIFIC RAILROAD COMPANY,
By LAWRENCE CAKE,
Its Attorney.

THE WESTERN PACIFIC RAILROAD COMPANY,
526 Mission Street,
San Francisco 5, California.

LAWRENCE CAKE,
1001 Connecticut Avenue,
Washington 6, D. C.,
Attorney of Record.

Here follows Schedule A, fol. 5-6

BILL NUMBER	GOV'T B/L NO.	DATE OF SHIPMENT	POINT OF ORIGIN	DESTINATION	COMMODITY DESCRIPTION INCLUDING PACKING	CAR NO. & INIT.	WEIGHT	RATE	LAND GRT. & SEC.	ACCRUED FREIGHT CHARGES	AMOUNT PAID ORIGINALLY	DEVIATION PENALTY	REFUNDS BY CARRIER	DEDUCTIONS BY GOV'T BILL	DEDUCTIONS BY GOV'T AMOUNT	NET AMOUNT PAID	BALANCE DUE	TARIFF REFERENCE AND ITEM OR SPECIAL RATE AUTHORITY	GOV'T REFERENCE	BASIS FOR CLAIM
P- 51356-A	W 7774545	12-11-37	Clover, Utah	Vandover, Utah	500 Ton Incendiary Bombs, filled with Napalm, without fuse or booster	GP 75245	60000	1.27		1905.90	756.36	38.10		P- 54286	38.10	756.36	739.20	Item 1353, GFA-17, Ist SP 7000 to W., WTB 13-J Depot.	W 178858	See NOTE below
	7774546	12-11-37	Same	Same	750 Ton Same	PFE 38139	60000	1.27		1905.90	768.42	38.21		P- 54286	38.21	768.42	705.36	Same	W 178858	See NOTE below
P- 51358-A	W 7774550	1-23-38	Clover, Utah	Vandover, Utah	500 Ton Same	NYKX 13487	60000	1.27		1905.90	831.30					831.30	868.32	Item 1353, GFA-17, Ist SP 7000 to W., WTB 13-J Depot.	W 178859	See NOTE below
	7774551	1-23-38	Same	Same	750 Ton Same	PFE 38139	60000	1.27		1905.90	846.36					846.36	824.26	Same	W 178859	See NOTE below
P- 51356-A	W 7774573	3-13-38	Clover, Utah	Vandover, Utah	500 Ton Same	PFE 11378	60000	1.27		1905.90	757.20					757.20	757.26	Item 1353, GFA-17, SP 7000 to W., WTB 13-J Depot.	W 178860	See NOTE below
	7774574	3-13-38	Same	Same	500 Ton Same	SP 13855	60000	1.27		1905.90	757.20					757.20	757.26	Same	W 178860	See NOTE below
P- 54290-A	W 7177552	7-31-39	Salida R/A Denver, Colo.	Pinedale, Calif.	250 Ton Aerial Bombs Empty (Bomb, Incendiary, M, 500-lb., AN-M47A2, Less Fins, Exterior & Wire Sealed) Charged with Napalm.	SFF 31577	71680	5.16		3703.37	1211.35					1211.35	2491.82	45% of 1st Class (97.13) to Item 1 94.07 45% of 1st Class (760) Layout : 2.52 Total 96.59 All Items in Carloads 30-L, WTB 39-E, WTB 198.	W 180194	See NOTE below
	7177553	8- 1-39	Same	Same	500 Ton Same	SP 25444	59320	5.16		3062.40	1214.59					1214.59	1276.86	Same	W 180194	See NOTE below
	7177554	7-31-39	Same	Same	450 Ton Same	SFRD 10750	71680	5.16		3703.17	1211.35					1211.35	2491.82	Same	W 180194	See NOTE below
	7177555	7-31-39	Same	Same	450 Ton Same	NYP 47114	77156	5.16		3982.95	1748.39					1748.39	2052.56	Same	W 180194	See NOTE below
	7177556	7-31-39	Same	Same	450 Ton Same	PFE 13458	70000	5.16		3723.60	1191.99					1191.99	2531.61	Same	W 180194	See NOTE below
	7177557	8- 1-39	Same	Same	450 Ton Same	SP 5958	59920	5.16		3021.01	1214.59					1214.59	1806.43	Same	W 180194	See NOTE below
	7177558	8- 1-39	Same	Same	450 Ton Same	SP 5986	59680	5.16		3009.90	1214.59					1214.59	1795.31	Same	W 180194	See NOTE below
																[illegible]	37710.58			

NOTE: The Government contends that Rule 32 of Consolidated Freight Classification No. 17 should be applied (the Combination Articles rule). On this basis, the Government contends that Incendiary Bombs, filled with napalm, without fuse or booster, should be rated at FIFTH Class, because Bombs are so rated in Item 1295 of CFC 17, and Napalm is to be rated in Item 54020 of CFC 17 (Soaps, NOIBN, Other than Liquid). The carrier contends that this commodity is rateable at First Class under Item 1200 of CFC 17, "Ammunition, Incendiary, Bombs or Mines," or, where it is applicable, at 45% of 1st Class under provision of 4th Section 22 Carloads 30-L.

Schedule A to Petition

7 [File endorsement omitted]

In the United States Court of Claims

No. 42-54

[Title omitted]

STATEMENT OF FACTS FOR ADMISSION UNDER RULE PRESCRIBING PROCEDURE IN RAILROAD CASES—Filed February 25, 1954

1. The plaintiff, a corporation of the State of California, is a common carrier by railroad over its own lines and jointly with other common carriers by railroad.

2. In 1947 and 1950, the plaintiff as the final and delivering carrier performed transportation service for the defendant, from various points of origin in the United States to destination points on plaintiff's lines, as shown in the attached Schedule A. Freight charges on the said shipments were billed by the plaintiff and were originally paid by the defendant's disbursing officers, in accordance with Section 66, Title 49, U. S. Code, and were subsequently audited by the General Accounting Office. In some instances adjustments were made by deductions from other bills due the plaintiff or by refunds made by the plaintiff at the demand of the General Accounting Office.

3. On each of the shipments in question, the applicable freight charges, on the basis of the Court's decision in Union Pacific Railroad Company v. United States, No. 49505, on April 7, 1953, the amount paid originally, the amount of any supplemental payments made by the defendant, the amount of any refunds made by the plaintiff, the deductions made by the defendant from other
8 bills due the plaintiff, the net amount paid, and the balance due on the basis of the applicable published rates or other rate authority cited, are shown in the attached Schedule A.

4. In all instances where refunds were made by the plaintiff or deductions were made by the defendant from other bills due the plaintiff, the said refunds or deductions were made within 6 years prior to January 29, 1954. In all instances where the amounts paid are shown to be less than the applicable charges, the service was performed within 6 years prior to January 29, 1954.

LAWRENCE CAKE,
Attorney for Plaintiff.

9 SCHEDULE "A" TO STATEMENT

Omitted. Printed side page 5 ante.

10 In the United States Court of Claims

[Title omitted]

DEFENDANT'S ANSWER—Filed May 28, 1954

The defendant, for answer to plaintiff's petition, states as follows:

1. Defendant admits the allegations contained in paragraphs 1 and 2 of plaintiff's petition.

2. Defendant admits the allegations contained in paragraph 3 of plaintiff's petition, except as to the charges listed in plaintiff's Schedule A under plaintiff's bill No. F-46030-A. As to the latter bill on which plaintiff claims charges based on the rate of $5.16 per 100 pounds, defendant avers that the rate should read "$5.14 per 100 pounds."

3. Defendant denies the allegations contained in paragraph 4 of plaintiff's petition.

11 4. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 5 of plaintiff's petition.

WHEREFORE, defendant asks that the petition herein be dismissed with all costs taxed against the plaintiff.

WARREN E. BURGER,
Assistant Attorney General,
Civil Division.

GORDON F. HARRISON,
Attorney, Civil Division,
Department of Justice.

12 DEFENDANT'S RESPONSE TO PLAINTIFF'S STATEMENT OF FACTS FOR ADMISSION AND PLAINTIFF'S SCHEDULE A UNDER RULE EFFECTIVE APRIL 1, 1953, PRESCRIBING PROCEDURE IN COMMON CARRIER CASES

1. Admits.

2. Admits, except that the phrase "in 1947 and 1950" should read "in 1947, 1948 and 1950."

3. Admits, except that Schedule A is inaccurate in listing $5.16

per 100 pounds as the rate for shipments under plaintiff's bill No. F-46030-A. The correct figure is $5.14 per 100 pounds.

4. Admits.

WARREN E. BURGER,
Assistant Attorney General,
Civil Division.

GORDON F. HARRISON,
Attorney, Civil Division,
Department of Justice.

13 In the United States Court of Claims

[Title omitted]

MEMORANDUM RE PRETRIAL CONFERENCE— November 10, 1954

The parties, met pursuant to notice of the Commissioner, in the Commissioner's office, United States Court of Claims, Court of Claims, Washington, D. C., on November 10, 1954.

Present:

Hon. Roald A. Hogenson, Commissioner;
Mr. Lawrence Cake for the plaintiff;
Mr. Gordon Harrison for the defendant;
Mr. E. Craig Kennedy, Attorney, General Counsel's Office, General Accounting, and
Mr. Russell B. Amick, Transportation Specialist, General Accounting Office.

The parties agreed upon the following facts:

1. The plaintiff, a corporation of the State of California, is a common carrier by railroad over its own lines and jointly with other common carriers.

2. In 1947, 1948 and 1950, the plaintiff performed transportation service for the defendant over its own lines and jointly with other carriers whose lines connect with the plaintiff's lines, by carrying a number of shipments of articles described as incendiary bombs without fuzes and bursters, being like the articles transported in the *Union Pacific* case No. 49505, previously decided by this Court on April 7, 1953.

14 3. For the said service performed in 1948 and 1950, covered by plaintiff's bills F-41520, F-42516 and F-46030, the transportation charges claimed by the plaintiff are on the basis of classification of the articles shipped as incendiary bombs pursuant to Item 1820 of Consolidated Freight Classification No. 17, and the rates applicable thereto. The transportation charges

paid by the defendant on the said bills are on the basis of classification of the articles shipped as combination articles under Rule 18 of Consolidated Freight Classification No. 17 and the rates applicable thereto. The difference between the charges claimed by the plaintiff and the charges paid by the defendant, as reported by the General Accounting Office and on the basis of the court's decision in the *Union Pacific* case No. 49505, is $14,280.06.

4. No action or suit has been commenced or is pending in any other court on account of this claim; no action has been had thereon in Congress or by any of the executive departments or agencies other than as herein stated; the plaintiff is the owner of the claim herein stated and no assignment or transfer of the whole or any part thereof or any interest therein has been made.

ROALD A. HOGENSON,
Commissioner.

November 10, 1954.

15 In the United States Court of Claims

[Title omitted]

PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS, OR FOR SUMMARY JUDGMENT UNDER RULE 51—Filed November 17, 1954

The plaintiff moves for judgment on the pleadings, or for summary judgment on the ground that there is no genuine issue as to any material fact and the plaintiff is entitled to judgment as a matter of law.

On February 25, 1954, the plaintiff filed a statement of facts for admission and accompanying schedule in compliance with the court's order of March 11, 1953.

On May 28, 1954, the defendant filed an answer to the petition and a response to the plaintiff's statement of facts for admission.

16 On November 10, 1954, a pre-trial conference was held with Commissioner Hogenson and a pre-trial memorandum was filed, as follows:

"The parties agreed upon the following facts:

"1. The plaintiff, a corporation of the State of California, is a common carrier by railroad over its own lines and jointly with other common carriers.

"2. In 1947, 1948 and 1950, the plaintiff performed transportation service for the defendant over its own lines and jointly with other carriers whose lines connect with the plain-

tiff's lines, by carrying a number of shipments of articles described as incendiary bombs without fuzes and bursters being like the articles transported in the *Union Pacific* case No. 49505, previously decided by this Court on April 7, 1953.

"3. For the said service performed in 1948 and 1950, covered by plaintiff's bills F-41520, F-42516 and F-46030, the transportation charges claimed by the plaintiff are on the basis of classification of the articles shipped as incendiary bombs pursuant to Item 1820 of Consolidated Freight Classification No. 17, and the rates applicable thereto. The transportation charges paid by the defendant on the said bills are on the basis of classification of the articles shipped as combination articles under Rule 18 of Consolidated Freight Classification No. 17 and the rates applicable thereto. The difference between the charges claimed by the plaintiff and the charges paid by the defendant, as reported by the General Accounting Office and on the basis of the court's decision in the *Union Pacific* case No. 49505, is $14,280.06.

"4. No action or suit has been commenced or is pending in any other court on account of this claim: no action has been had thereon in Congress or by any of the executive departments or agencies other than as herein stated; the plaintiff is the owner of the claim herein stated; and no assignment or transfer of the whole or any part thereof or any interest therein has been made."

17

1. The pre-trial memorandum shows that the facts and issue in this case are identical with the facts and issue in *Union Pacific R. Co.* v. *United States,* No. 49505, decided on April 7, 1953, 125 C. Cls. 390. The plaintiff is entitled to summary judgment as a matter of law, on the authority of the decision in the *Union Pacific* case, for $14,280.06.

2. The facts alleged in the petition and admitted by the defendant's answer are substantially the same as the facts set out in the pre-trial memorandum. The only difference is in the amount claimed in the petition and the amount conceded to be due the plaintiff on the basis of the court's decision in the *Union Pacific* case. The latter is $14,280.06 as stated in the pre-trial memorandum. The plaintiff therefore is entitled to judgment as a matter of law, on the pleadings, for $14,280.06.

LAWRENCE CAKE,
Attorney for Plaintiff.

* * * * * * *

18

Affidavits Attached to Brief in Opposition to Plaintiff's Motion for Judgment on the Pleadings or for Summary Judgment —Filed February 4, 1955

EXHIBIT 1

In the United States Court of Claims

THE WESTERN PACIFIC RAILROAD COMPANY, PLAINTIFF

v.

THE UNITED STATES, DEFENDANT

State of Maryland,
County of Harford:

BERNARD F. FAY being duly sworn deposes and says:

I am a Chemical Engineer employed in the Chemical Corps, Chemical and Radiological Laboratories located at Army Chemical Center, Maryland. My duties include the testing, research and development of flammable substance to be used in flame throwers and fire bombs.

I graduated from the Rice Institute in Texas as a Chemical Engineer in 1925 and for the past 30 years have practiced my profession specializing in explosives, combustion and metallurgy. For the past 4 years I have been employed in the Chemical and Radiological Laboratories of the Army Chemical Corps and served in the Army for 4 years during the war as an engineer in the chemical warfare service.

I am wholly familiar with the mechanics, operation and composition of the "Bomb, Incendiary AN-M47A2 and AN-M47A3" both of which when fully assembled are popularly known
19 as 100 lb. Napalm bombs. In my work I have fully tested the substance with which these bombs are filled known as Napalm Gel and with which I am advised the bomb bodies shipped herein were filled.

Napalm Gel is nothing more than gasoline solidified by the addition of aluminum soap thickener. Upon due consideration it is my opinion that the Napalm Gel assumes incendiary qualities only when contained and as a part of a completed bomb which includes a burster and fuze. Napalm Gel contained in a bomb body to which the burster and fuze have not yet been added is an inflammable substance in that state and is not incendiary. The description of the bomb as incendiary used in the Army technical manuals denotes the eventual use to which the completed

bomb will be put and is not descriptive of a steel bomb body filled with Napalm Gels alone. A bomb capable of functioning as such does not actually become a bomb until all the component parts thereof have been assembled. A bomb body filled with Napalm Gel and having no other parts of the completed bomb added thereto actually is nothing more than a container for the Napalm Gel within and, in fact, presents considerable less hazard in transit, from a transportation viewpoint, than a drum filled with gasoline because Napalm Gel will not and can not leak from its container because it is a solid substance. Neither will Napalm Gel burn as readily as gasoline.

Substances transported commercially which present the same or greater hazard during shipment and which in containers are analogous to Napalm Gel contained in a steel bomb body
20 are oil based paints in cans, sterno in cans, printers ink in drums, rubber cement in cans or drums, greases in drums and other similar inflammable substances in containers. As a matter of fact any of the items mentioned above could function with almost equal effectiveness as a substitute in Napalm Gel in the completed incendiary bomb. Moreover the attachment of a burster and fuze to a drum or can of rubber cement would thereby convert it to an incendiary bomb.

BERNARD F. FAY.

Sworn to before me this 31st day of January, 1955.

IDA D. MONTANARY,
Notary Public.

My commission expires 2 May 1955.

EXHIBIT 2

IN THE UNITED STATES COURT OF CLAIMS

THE WESTERN PACIFIC RAILROAD COMPANY, PLAINTIFF

v.

THE UNITED STATES, DEFENDANT

STATE OF MARYLAND,
County of Harford:

DR. LEO FINKLESTEIN being duly sworn deposes and says:
I am a Chemical Engineer and Physical Chemist employed in the Chemical Corps, Chemical and Radiological Laboratories
21 located at Army Chemical Center, Maryland. My duties include research in incendiaries and smoke. I am the

Scientific Advisor to the Chief of Chemical Division on incendiaries and smoke, Project Officer on incendiary contracts and Project Engineer in the development of gels used in incendiary bombs.

I received a B.S. in Chemical Engineering at Illinois Institute of Technology in 1914, my Ph. D. in physical chemistry and physics at the University of Chicago in 1921. I was 2nd Lt. in the Chemical Warfare Services, AEF, from 1917 to 1919, a Research Chemist in the Bureau of Mines in 1920 to 1923 and a Research Chemist with the Army Chemical Center from 1924 to the present.

I am wholly familiar with the mechanics, operation and composition of the "Bomb, Incendiary AN-M47A2 and AN-M47A3" both of which when fully assembled are popularly known as 100 lb. Napalm bombs. In my work I have fully tested the substance with which these bombs are filled known as Napalm Gel and with which I am advised the bomb bodies shipped herein were filled.

Napalm Gel is nothing more than gasoline solidified by the addition of aluminum soap thickener. Upon due consideration it is my opinion that the Napalm Gel assumes incendiary qualities only when contained and as a part of a completed bomb which includes a burster and fuze. Napalm Gel contained in a bomb body to which the burster and fuze have not yet been added is an inflammable substance in that state and is not incendiary.

22 The description of the bomb as incendiary used in the Army technical manuals denotes the eventual use to which the completed bomb will be put and is not descriptive of a steel bomb body filled with Napalm Gels alone. A bomb capable of functioning as such does not actually become a bomb until all the component parts thereof have been assembled. A bomb body filled with Napalm Gel and having no other parts of the completed bomb added thereto actually is nothing more than a container for the Napalm Gel within and, in fact, presents considerably less hazard in transit, from a transportation viewpoint than a drum filled with gasoline because Napalm Gel will not and can not leak from its container because it is solid in substance and will not burn as readily.

The more important part of the completed incendiary bomb which enables the bomb to function as such is the burster which contains an explosive (tetroyl) and igniter with the Napalm Gel and it is the combination of these which is the actual incendiary element of the bomb. From the pointed view and expenses of construction the burster and fuze to my knowledge comprises more than 75% of the cost of the completed bomb whereas the

gel and the steel bomb body comprise less than 25% of the cost thereof.

A comparison can be made in the case of the "smoke" bomb which does not contain smoke but only a mixture which produces smoke when ignited by a suitable fuze and igniter, with incendiary which contains an inflammable mixture of gasoline and aluminum soap which does not function as an incendiary
23 until exploded and ignited. The term either smoke or incendiary is only used to identify the tactical use of the completed bomb.

DR. LEO FINKELSTEIN.

Sworn to before me this 28 day of January 1955.

IDA D. MONTANARY,
Notary Public.

My commission expires 2 May 1955.

EXHIBIT 3

UNITED STATES COURT OF CLAIMS

No. 42-54

THE WESTERN PACIFIC RAILROAD COMPANY, PLAINTIFF

v.

THE UNITED STATES OF AMERICA, DEFENDANT

AFFIDAVIT

WASHINGTON,
District of Columbia, ss:

I, DR. HOMER W. CARHART, being duly sworn on oath, depose and say:

I. That I am the Head, Fuels Branch, Chemistry Division, Naval Research Laboratory, in the District of Columbia; that I received the degree of Doctor of Philosophy in Organic Chemistry from the Maryland University in 1939.

II. That, among my other official duties, I am charged with the direction of research on petroleum and rocket fuels.
24 III. That I am familiar with thickened gasoline, having worked in connection therewith during World War II in certain projects submitted by the Navy Department.

IV. Napalm gel consists of gasoline and a solidifying agent, aluminum stearate, which is added to the gasoline for the pur-

pose of creating an adhesive mass capable of destroying property by fire when properly activated.

V. Napalm gel itself is not incendiary, since it is not capable of spontaneous combustion and must be activated by use of a pyrotechnic material, such as white phosphorus, before it assumes any incendiary characteristics.

VI. That, with respect to incendiary characteristics, Napalm gel is not different from rubber cement which is also used as a component of incendiary bombs but which itself is not incendiary.

VII. That the white phosphorus charge used in an incendiary bomb when said bomb is in its final form and suitable for its intended purpose is the incendiary which, as such, is capable of self-ignition and ignites the Napalm or similar gel that is contained in the completed bomb.

VIII. That a container of Napalm gel is not handled differently from a container of ordinary gasoline and is not considered any more incendiary than is ordinary gasoline.

HOMER W. CARHART.

Subscribed and sworn to before me, by the affiant above named, this 1st day of February 1955.

DOROTHY R. NIEMAN,
25 *Notary Public.*

EXHIBIT 4

IN THE UNITED STATES COURT OF CLAIMS

THE WESTERN PACIFIC RAILROAD COMPANY, PLAINTIFF

v.

THE UNITED STATES, DEFENDANT

STATE OF MARYLAND,
County of Harford:

DR. SIDNEY MAGRAM being duly sworn deposes and says:

I have been employed as a Chemical Engineer and a Physical Chemist in the Chemical Corps, Chemical and Radiological Laboratories located at Army Chemical Center, Maryland since July of 1940. I am Branch Chief of the Incendiary and Aerosol Branch which negotiates in research and development of incendiary pyrotechnics and smokes. I received my B. S. at the University of Pittsburgh in 1937 and my Ph. D. at New York University in 1941.

I am wholly familiar with the mechanics, operations and composition of the "Bomb, Incendiary AN-M47A2 and AN-M47A3"

both of which when fully assembled are popularly known as 100 lb. Napalm bombs. In my work I have fully tested the substance with which these bombs are filled known as Napalm Gel and with which I am advised the bomb bodies shipped herein were filled.

26 Napalm Gel is nothing more than gasoline solidified by the addition of aluminum soap thickener. Upon due consideration it is my opinion that the Napalm Gel assumes incendiary qualities only when contained and as a part of a completed bomb which includes a burster and fuze. Napalm Gel contained in a bomb body to which the burster and fuze have not yet been added is an inflammable substance in that state and is not incendiary. The description of the bomb as incendiary used in the Army technical manuals denotes the eventual use to which the completed bomb will be put and is not descriptive of a steel bomb body filled with Napalm Gels alone. A bomb capable of functioning as such does not actually become a bomb until all the component parts thereof have been assembled. A bomb body filled with Napalm Gel and having no other parts of the completed bomb added thereto actually is nothing more than a container for the Napalm Gel within and, in fact, presents considerable less hazard in transit, from a transportation viewpoint, than a drum filled with gasoline because Napalm Gel will not and can not leak from its container because it is a solid substance. Neither will Napalm Gel burn as readily as gasoline.

Substances transported commercially which present the same or greater hazard during shipment and which in containers are analogous to Napalm Gel contained in a steel bomb body are oil based paints in cans, sterno in cans, printers ink in drums, rubber cement in cans or drums, greases in drums and other similar inflammable substances in containers. As a matter of fact any of the

27 items mentioned above could function with almost equal effectiveness as a substitute in Napalm Gel in the completed incendiary bomb. Moreover the attachment of a burster and fuze to a drum or can of rubber cement would thereby convert it to an incendiary bomb.

DR. SIDNEY MAGRAM.

Sworn to before me this 31st day of January 1955.

IDA D. MONTANARY,
Notary Public.

My commission expires 2 May 1955.

EXHIBIT 5

STATE OF VIRGINIA,
Countby of Arlington, ss.

AFFIDAVIT

JOHN A. MCCONNELL being first duly sworn on oath deposes and states:

1. That he is employed in the Office of the Chief of Transportation, Freight Traffic Division, Rate Negotiation Branch, Classification Section; that he is Assistant Chief of the Classification Section; which is responsible for handling all matters pertaining to the proper freight classification of all materials shipped by the Department of the Army;

2. That he was employed in the Classification Section at the time Change 3 to SB 55-6, Freight Billing Guide, was published on 12 August 1947 and is familiar with the circumstances
28 which lead up to the publication of that Change; that under Change 3 bomb bodies filled with a gasoline gel (gasoline mixed with Napalm) were properly billed as aerial bombs, empty, and that such conclusion was reached after discussion with and agreement by classification experts employed by the Army and the railroads, and in consideration of the fact that the commodity as shipped, without burster and fuze, was neither incendiary nor explosive.

3. That incendiary bombs complete with boosters and fuzes were actually shipped when assembled in multiple-bomb clusters, were properly classified under item 1820 of Consolidated Freight Classification, and freight charges have been paid on that basis.

JOHN A. MCCONNELL.

Subscribed to and sworn before me this the 2nd day of February 1955.

WALTER E. SCOTT,
Notary Public.

My Commission Expires Mar. 10, 1956.

29

EXHIBIT 6

UNITED STATES COURT OF CLAIMS

No. 42-54

THE WESTERN PACIFIC RAILROAD COMPANY,
PLAINTIFF,

v.

THE UNITED STATES OF AMERICA, DEFENDANT

AFFIDAVIT

WASHINGTON,
District of Columbia, SS.

I, RUSSELL B. AMICK, being duly sworn on oath depose and say:

I. That I am Group Supervisor, Special Reports Section, Transportation Division General Accounting Office.

II. That from 1920 to 1935 I was employed as a freight rate clerk by the Southern Railway and from 1935 until the present time I have been employed by the General Accounting Office in various capacities all dealing with transportation in general and freight classification and rates in particular.

III. That during the period from 1920 to the present time my official duties required among other things the constant use and application of tariffs issued by common carriers or their agents including the tariff commonly referred to as the Consolidated Freight Classification.

30 IV. That I am familiar with Consolidated Freight Classification No. 17, preceding and superseding issues thereof.

V. That I was closely concerned with the audit of transportation accounts involving shipments of steel bomb bodies filled with napalm gel, but shipped without igniters, bursters or fuzes, similar to the articles involved in this suit.

VI. That in my opinion the application of Item 1800 of Consolidated Freight Classification No. 17 is limited by its terms to articles of ammunition which during transportation are either explosive, incendiary or gas, smoke or tear producing, and that, by reason of the reference in that item to Note 1, item 1805, its application also is limited to items of ammunition, etc., which are subject to the rules and regulations published in Agent W. S. Topping's Tariff No. 4, I.C.C. No. 4, and superseding issues thereof.

VII. That neither the referred-to item 1800 nor any of the items published as sub-headings thereunder in said Consolidated Freight Classification No. 17 has any application to articles which during transportation are not ammunition, explosive, incendiary, or gas,

smoke or tear producing or to articles which are not subject to the rules and regulations published in Agent W. S. Topping's I.C.C. No. 4.

VIII. That the provisions of Consolidated Freight Classification No. 17 and the rules and regulations published in Agent W. S. Topping's I.C.C. No. 4 apply to explosives and other articles
31 in the form in which such articles are handled and transported by common carriers In the instant case the addition of the burster, fuze and igniter after delivery at destination did not affect the classification or identity of the article during transportation.

IX. That the articles involved in this suit, having been transported without fuzes, bursters, or igniters, were not subject to the provisions of Agent Topping's Tariff No. 4, and were not fairly embraced within the general caption in item 1800 and are not subject to the ratings named in item 1820 of Classification No. 17.

RUSSELL B. AMICK.

Subscribed and sworn to before me, by the affiant above named, this 2nd day of February 1955.

EDWIN A. BERGER,
Notary Public.

My Commission Expires July 14, 1956.

32 EXHIBIT 7

United States Court of Claims

No. 42-54

WESTERN PACIFIC RAILROAD COMPANY, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

AFFIDAVIT

WASHINGTON,
District of Columbia.

A. S. DOLCH, being duly sworn, deposes and says:

I

My name is A. S. Dolch. I reside in Washington, D. C. and for the past seven years have been employed by the Department of Justice as a Transportation Rate Analyst. My transportation experience covers over fifty years including about six years pre-

vious to my present employment with three other Government agencies, viz: U. S. Department of Agriculture, War Production Board, and Board of Investigation and Research-Transportation.

Immediately preceding my government service, for almost twenty years, I was traffic manager of the Chicago, Attica & Southern Railroad Company. During the 20 years mentioned, by virtue of my office, I was a member of the general rate committee of the Central Freight Association, the rate making organization of the railroads operating in the area north of the Ohio River
33 and east of the Mississippi roughly to the Appalachians or a line known in railroad parlance as "the Buffalo-Pittsburgh Line".

I was traffic manager for commercial concerns at Tulsa, Oklahoma and at St. Louis, Missouri for about three years, and from 1910 to 1920 I was employed in various positions in the commercial office and in the general freight office at St. Louis of the St. Louis-San Francisco Lines, which included the operations of the Chicago and Eastern Illinois Railroad Company prior to 1914.

In connection with my service for the Frisco Lines my duties for over three years involved handling rate adjustment files including correspondence with shippers and other railroads, also docketing rate proposals with the Southwestern Freight Bureau and St. Louis District Committee (during Federal Control)—on occasion. I attended these rate bureau meetings. During this period, I also performed the physical operation of supplementing and reissuing freight tariffs, observing the tariff-making rules of the Interstate Commerce Commission then current.

II

I am familiar with the Consolidated Freight Classification No. 17, preceding and succeeding issues, all of which are filed with the Interstate Commerce Commission: I have inspected some of the bills-of-lading covering certain shipments here involved, have seen the billed description as "empty bombs" and corrections by
34 the railroads that on inspection by some of their Bureau inspectors, it was discovered the metal bombs or bomb bodies were filled with gasoline jelly.

III

In my opinion, item 1820 of Classification No. 17, and the same item and identical reading in classifications 16, 18 and 19, does not apply to the shipments in question for the following reasons:

1. Under proper tariff interpretation, all language in any rate item must be read together; further, according to the makeup of the classification, the principal subject matter to consider here is item 1800, reading *"Ammunition, Explosive, Incendiary or Gas, Smoke or Tear Producing, see Note 1, item 1805:"*—then follows

Note 1 under Item 1805 indented two spaces and the subheads of the different varieties of ammunition (1800) under items 1810 to 1865 inclusive indented one space. According to the Interstate Commerce Commission's rules for tariff publication (their tariff Circular No. 20), this method of printing a general description, with subheadings indented brings all such subheads under the main description.

2. Note 1 under the description in item 1800, *AMMUNITION, Explosive, Incendiary or Gas, Smoke or Tear Producing* says that this item is "subject to Rule 39" (of the Classification) with a minor exception of no consequence here. Rule 39 (p. 144) reads in part:

35 Explosives or other dangerous articles will *only* be handled and transported by:

1. Rail carriers parties to these classifications in accordance with rules and regulations prescribed by the Interstate Commerce Commission as published in Agent H. A. Campbell's Freight Tariff No. 4, I.C.C. No. 4, supplements thereto and reissues thereof. (Paragraphs 2 and 3 omitted as they relate to motor and water carriers.)

If description provided in Bureau of Explosive Tariff, Agent H. A. Campbell's I.C.C. No. 4, supplements thereto and reissues thereof, differs from description contained in Classification, Exception, or commodity tariff, Bureau of Explosives description on shipping orders and bills of lading must be shown first and other descriptions immediately thereafter in parentheses. (Emphasis supplied.)

My emphasis of the word *only* in the first sentence of Rule 39 is to point to the exclusive nature of the rule. Reference to Agent H. A. Campbell's (formerly W. S. Topping's) I.C.C. No. 4 indicates (Part 1, pars. B, F and G, pp. 40-41) that this publication is made pursuant to an Act of Congress and regulations of the Interstate Commerce Commission (their docket 3666) resulting therefrom (18 U.S.C. 835). The tariff, I.C.C. No. 4, provides in Sec. 56 (p. 63) that "material relating to ammunition—such as—sand-loaded bombs, empty projectiles, empty mines, empty bombs,—is exempt from these regulations."

36 II

In view of my experience and in light of the information set forth above, I am convinced that in order for an article to be rated under Item 1800 or any of its specific twelve subdivisions (Items 1810 through 1865) it must be an article which itself is subject to regulation under Topping's Tariff I.C.C. No. 4. These regulations are promulgated by the Interstate Commerce Commission and are published in the Code of Federal Regulations at 49

C.F.R., Parts 71-78. Therefore, it is very clear to me that an empty bomb, a sand-loaded bomb or a bomb shell filled with an inert substance such as jellied gasoline is not included under the reading of the Classification item 1820 as circumscribed by items 1800 and 1805, the three items being restricted and further elaborated by Rule 39 of the Classification and Agent H. A. Campbell's I.C.C. No. 4. I wish further to state that I have carefully searched the listing of "dangerous articles" in tariff I.C.C. 4 and do not find therein the listing of *jellied gasoline*.

A. S. DOLCH.

Subscribed and sworn to before me this 2d day of February, 1955.

MADELINE MACDONALD,
Notary Public, D. C.

My Commission expires Jan. 14, 1956.

37

EXHIBIT 8

In the United States Court of Claims

No. 42-54

THE WESTERN PACIFIC RR CO.

v.

THE UNITED STATES

AFFIDAVIT

T. C. GEORGE being duly sworn, deposes and says:

That I have been employed by the Bureau of Explosives since 1943 and from 1948 to the present have been Assistant Chief Inspector thereof. I make this affidavit in the place and stead and with the full authority of Harry A. Campbell, the Chief Inspector for the Bureau of Explosives. This affidavit and all the facts contained therein are concurred in by Mr. Campbell who has authorized me to make this affidavit by reason of the fact that he is presently attending a conference in Ontario, Canada.

That the Bureau of Explosives is an association consisting of explosives manufacturers, railroads, steamship companies, express companies and others in similarly related industries. The duties of the Bureau are to enforce the regulations of the Interstate Commerce Commission with relation to the transportation of explosives and other dangerous articles and whose finances are administered by the Association of American Railroads.

That my official duties consisted generally of acting as
38 first assistant to the chief inspector of the Bureau in the conduct of experiments, research and instructions to persons connected with the Bureau.

That I have assisted and collaborated with the Chief Inspector in issuing "explosives and other dangerous articles Freight Tariff No. 4, I.C.C. No. 4, as amended" and superseding tariffs setting forth the rules and regulations approved by the Interstate Commerce Commission for the packing, marking, loading and handling of explosives and other dangerous articles.

That in the course of my official duties I have examined component parts or articles involved in this action, including Napalm gel and bomb bodies. I have also examined the fuzes and bursters or igniters which were not shipped with the other component parts of the bombs concerned herewith but which were essential to the proper operation and function of incendiary bombs in their final state.

That I examined the aforementioned component parts in the course of my duties and I examined other articles regarding which questions arise as to whether or not they are properly made or safe for transportation and for the purpose of prescribing the packing requirements and the regulations which would apply to their transportation.

That by letter dated January 26, 1945 signed by Colonel Gillet and Lietenant Colonel Sauls, Chemical Warfare Service, War Department (now Department of the Army) this Bureau was asked to examine the above-described components as to their character and nature.

That by letter dated May 17, 1945 in reply to the afore-
39 mentioned letter this Bureau stated over the signature of Harry A. Campbell, Chief Inspector, the conclusion that the Napalm filling (Napalm Gel) was not described as a dangerous article pursuant to the regulations of the Interstate Commerce Commission but that the fuzes and bursters or igniters were properly identifiable as explosive devices under those regulations.

That in response to inquiries from inspectors of the Bureau of Explosives throughout the country the Bureau informed them in writing that the articles examined in the form shipped—without fuzes, bursters or other mechanisms to open the bomb bodies and ignite the contents—was not a dangerous article or an explosive article.

That the basis for the Bureau's conclusion that the article as shipped did not come within the scope, or within any definition of the aforementioned regulations of the Commission as set forth in the aforementioned tariff No. 4 and superseding tariffs identifying explosives and other dangerous articles.

That by letter dated September 1, 1948 in response to a letter dated August 24, 1948 from the Official Classification Committee, which is primarily a railroad sponsored and maintained body responsible for classifying articles, principally for railroad trans-

portation purposes, the Bureau advised that bombs were shipped in various ways, some with fuzes, some without; that many bomb bodies contained nothing more than gelatinized gasoline; and that if a bomb body did not contain the burster containing the
40 explosive and igniter it was not a hazardous article.

That a bomb body filled with Napalm gel without burster, igniter, or fuze, would not be shipped either as an explosive or as an incendiary bomb.

That articles similar to those concerned herein being bomb bodies filled with Napalm gel without ignition elements, bursting charges, detonating fuzes, or other explosive components, did not fall within the purview of section 59, relating to explosive chemical ammunition of the aforementioned Tariff No. 4, since Napalm was not one of the chemicals or liquids referred to in sections 330, 342 and 364 of that tariff, relating to chemical ammunition.

That bomb bodies filled with Napalm gel but shipped without fuzes, bursters or igniters are not required to be shipped in accordance with the Interstate Commerce Commission regulations governing the shipment of explosives and other dangerous articles.

T. C. GEORGE.

Sworn to before me this 1st day of February, 1955. Mary T. Gilligan, *Notary*.

MARY T. GILLIGAN, Notary Public, State of New York No. 03-6521000. Qualified in Bronx County. Certificates filed in New York County. Commission Expires March 30, 1956.

41

EXHIBIT 9

UNITED STATES COURT OF CLAIMS

No. 42-54

THE WESTERN PACIFIC RAILROAD COMPANY, PLAINTIFF

v.

THE UNITED STATES OF AMERICA, DEFENDANT

AFFIDAVIT

WASHINGTON,
District of Columbia, ss:

I, WILLIAM LEVENSTEIN, being duly sworn on oath, depose and say:

I. That I am Group Supervisor, Special Reports Section, Transportation Division, General Accounting Office.

II. That my official duties require, among other things, that I assemble the documents involved in cases pending before the various courts of the United States in order to prepare proposed reports to the Department of Justice for use in defense of said suits.

III. That I have examined the bills of lading listed in Schedule A attached to the petition filed in the above-entitled suit.

IV. The description of the commodity shipped under those bills of lading is as follows:

42

Bill No.	Bill of Lading No.	Description
41236	WW-7790525	Aerial Bombs, Empty
	WW-7790526	Aerial Bombs, Empty
41520	WW-7790560	Aerial Bombs, Empty (M47A3)
	WW-7790562	Aerial Bombs, Empty (M47A3)
42516	WW-7790673	Aerial Bombs, Empty (M47A2)
	WW-7790672	Aerial Bombs, Empty (M47A2)
46030	WW-9177035	Aerial Bombs, Empty (Bomb, Incendiary, NP, 100-lb., AN-M47A2, Less Fuse, Burster & Wire Arming)
	WW-9177047	Aerial Bombs, Empty (Bomb, Incendiary, NP, 100-lb., AN-M47A2, Less Fuse, Burster & Wire Arming)
	WW-9177042	Aerial Bombs, Empty (Bomb, Incendiary, NP, 100-lb., AN-M47A2, Less Fuse, Burster & Wire Arming)
	WW-9177026	Aerial Bombs, Empty (Bomb, Incendiary, NP, 100-lb., AN-M47A2, Less Fuse, Burster & Wire Arming)
	WW-9177025	Aerial Bombs, Empty (Bomb, Incendiary, NP, 100-lb., AN-M47A2, Less Fuse, Burster & Wire Arming)
	WW-9177054	Aerial Bombs, Empty (Bomb, Incendiary, NP, 100-lb., AN-M47A2, Less Fuse, Burster & Wire Arming)
	WW-9177046	Aerial Bombs, Empty (Bomb, Incendiary, NP, 100-lb., AN-M47A2, Less Fuse, Burster & Wire Arming)

WILLIAM LEVENSTEIN.

Subscribed and sworn to before me, by the affiant above named, this 2nd day of February, 1955.

DOROTHY R. NEIMAN,
Notary Public.

My Commission Expires August 14, 1956.

43 In the United States Court of Claims

No. 104-54

BANGOR AND AROOSTOOK RAILROAD COMPANY

v.

THE UNITED STATES

PETITION—Filed March 10, 1954

To the Honorable Chief Judge and Associate Judges of the United States Court of Claims:

The plaintiff, Bangor and Aroostook Railroad Company, respectfully represents:

1. Plaintiff is a corporation organized and existing under the laws of the State of Maine and is a common carrier by railroad in interstate commerce over its own lines and jointly with other carriers.

2. In 1944 plaintiff performed transportation services for the defendant, over its own lines and jointly with other carriers whose lines connect with the plaintiff's lines, by carrying a number
44 of shipments of articles described as incendiary bombs, as shown in the attached statement, Exhibit A.

3. For the transportation services rendered, the charges claimed by the plaintiff are on the basis of classification of the articles shipped as Bombs, Incendiary, pursuant to Item 1820 of the Consolidated Freight Classification, and the rates applicable thereto. The settlements made by the General Accounting Office are on the basis of lower rates made under Rule 18 of the Consolidated Freight Classification. Further details of the said shipments, with references to the bills of lading, dates of shipments, plaintiff's bill numbers, the transportation charges billed and paid, are shown in the attached statement, Exhibit A, which is made part hereof.

4. Plaintiff avers that the correct and lawful transportation charges on the said shipments are as stated in Exhibit A hereto, that the defendant has refused and failed to pay the correct and lawful charges as stated, and that there is due and owing plaintiff from the United States a balance of $80,131.96.

5. Plaintiff further avers that no action or suit has been commenced or is pending in any other court on account of this claim; that no action has been had thereon in Congress or by any of the executive departments or agencies other than as herein stated; that plaintiff is the owner of the claim herein stated and that no assign-

ment or transfer of the whole or any part thereof or any interest therein has been made.

45 WHEREFORE, plaintiff prays judgment against the defendant in the sum of $80,131.96.

BANGOR AND AROOSTOOK RAILROAD COMPANY,

By LAWRENCE CAKE,
Its Attorney.

BANGOR AND AROOSTOOCK RAILROOD COMPANY,
Bangor, Maine.

LAWRENCE CAKE,
1001 Connecticut Avenue,
Washington 6, D. C.,
Attorney of Record.

Statement showing amounts due Bangor and Aroostook Railroad Company from the United States representing differences account disputed application of rates on shipments of incendiary bombs

Road A RR Bill Number	Government Bill of Lading No.	Date of Shipment	Point of Origin	Destination	Commodity Description including Packing	Car No. and Initial	Weight	Rate
7869 (1944)	VT1460953	6-16-44	Eastvillo,Me.	Searsport,Me.	430 Bomb Fireworks,P. 16/727 Bombs W.P.Filled	24816414	696.00	70¢
Do	VT1460965	Do	Do	Do	Do	Bos line 13633h	69700	70¢
Do	VT1460965	Do	Do	Do	660 Bomb Fireworks,P. 16/727 Bombs W.P.Filled	C.P. 889983	55800	70¢
Do	VT1460966	6-17-44	Do	Do	430 Bomb Fireworks,P. 16/727 Bombs W.P.Filled	B&O 876661	69800	70¢
Do	VT1460963	5-25-44	Do	Do	635 Bomb Fireworks,P. 100# Bombs W.P.Filled	2086798	63000	70¢
Do	VT1460967	Do	Do	Do	770 Bomb Fireworks 100# 16/727 Bombs W.P.Filled	24816067	76100	70¢
Do	VT1460956	Do	Do	Do	430 Bomb Fireworks 100# 16/727 Bombs W.P.Filled	6892708	67100	70¢

Land Grant Percent. Deduction	Assessable Freight Charges	Amount Paid Originly	Supplemental Payments	Refund by Carrier	Deduction by Gov't Bill Number	Deduction by Gov't Amount	Net Amount Paid	Balance Due	Tariff Reference and Item or Special Rate Authority	Government File Reference	Basis for Claim
	1387.32	1387.32			7936 7943 7951 7957 7958 7964	517.80	739.44	517.80	Carlotte 100 A-800 Section 22-Int Carlotte MRC7000-4583 Section 22-Int Carlotte Section 22	T-SECOL-150869-A/44 M. P. Rate	Shipment Consisted of Complete Explosive Incendiary Bombs
	1498.49	1498.49			Do	550 .52	737.97	550.52	Do	Do	Do
	1166.69	1166.69			Do	489.93	656.76	489.93	Do	Do	Do
	1290.54	1290.54			Do	551.39	739.15	551.39	Do	Do	Do
	1301.75	1301.75			Do	553.15	748.10	553.15	Do	Do	Do
	1568.96	1568.96			Do	668.17	900.79	668.17	Do	Do	Do
	1390.56	1390.56			Do	546.95	795.31	546.95	Do	Do	Do
	9158.11	9158.11				3906.39	5251.82	3906.39			

EXHIBIT A to Petition

Statement showing amounts due Bangor and Aroostook Railroad Company from the United States representing differences account disputed application of rates on shipments of incendiary bombs

Bond A XX Bill Number	Government Bill of Lading No.	Date of Shipment	Point of Origin	Destination	Commodity Description including Packing	Car No. and Initial	Weight	Rate
$2160(1564)	W&A0095	5-13-44	Huron, Ohio	Searsport, Me.	Bombs, Incendiary, Loose 1st Locomotive Matter	B2118.45	97516	1.39
Do	W&A0096	Do	Do	Do	Do	Alton 30712	97516	1.39
Do	W&A0093	Do	Do	Do	Do	WP19550	97516	1.39
Do	W&A0094	Do	Do	Do	Do	Erie 76850	97516	1.39
Do	W&A0095	Do	Do	Do	Do	BRIF 69845	97516	1.39
Do	W&A0097	Do	Do	Do	Do	Erie 70139	97516	1.39
Do	W&A0098	Do	Do	Do	Do	A.T. 77686	97516	1.39
Do	W&A0099	Do	Do	Do	Do	BRI 1215	97516	1.39
Do	W&A0100	Do	Do	Do	Do	ATSF 129550	97516	1.39

Land Grant Percent. Deduction	Reasonable Freight Charges	Amount Paid Originly	Supplemental Payments	Refunded by Carrier	Deduction by Gov't Bill Number	Deduction by Gov't Amount	Net Amount Paid	Balance Due	Tariff Reference and Item or Special Rate Authority	Government File Reference	Basis for Claim
	1257.96	1257.96			1350(5302) 1357-5367 1369-5370 1372 1377-5378 1380-5389 1394-5398 M335(1951)	$95.10	677.86	$95.10	Agent ICC 2482 Section 22-1hf Quotation 405 of 1st class Plus 25% increase	3-380 C.C.C. 26875 4/44 R.R.S.	Shipment Omitted of Complete Explosive Incendiary Bombs
	1257.96	1257.96			Do	$95.10	677.86	$95.10	Do	Do	Do
	1257.96	1257.96			Do	$95.10	677.86	$95.10	Do	Do	Do
	1257.96	1257.96			Do	$95.10	677.86	$95.10	Do	Do	Do
	1257.96	1257.96			Do	$95.10	677.86	$95.10	Do	Do	Do
	1257.96	1257.96			Do	$95.10	677.86	$95.10	Do	Do	Do
	1257.96	1257.96			Do	$95.10	677.86	$95.10	Do	Do	Do
	1257.96	1257.96			Do	$95.10	677.86	$95.10	Do	Do	Do
	1257.96	1257.96			Do	$95.10	677.86	$95.10	Do	Do	Do

Statement showing amounts due Bangor and Aroostook Railroad Company from the United States representing difference account disputed application of rates on shipments of incendiary bombs

B and A RR Bill Number	Government Bill of Lading No.	Date of Shipment	Point of Origin	Destination	Commodity Description including Packing	Car No. and Initial	Weight	Rate
Do	W&.0[illegible]21	5-25-44	Do	Do	Do	PE 68823	97526	1.89
Do	W&.0[illegible]22	Do	Do	Do	Do	PE 120145	97526	1.89
Do	W&.0[illegible]23	Do	Do	Do	Do	GE 47308	97526	1.89
Do	W&.0[illegible]24	Do	Do	Do	Do	PE 45990	97526	1.89
Do	W&.0[illegible]25	Do	Do	Do	Do	ESS 22883	97526	1.89
Do	W&.0[illegible]26	Do	Do	Do	Do	KI 145447	97526	1.89
Do	W&.0[illegible]28	Do	Do	Do	Do	PE 78847	97526	1.89
Do	W&.0[illegible]29	Do	Do	Do	Do	ILAM 48024	97526	1.89
Do	W&.0[illegible]30	Do	Do	Do	Do	GEL 307182	97526	1.89
Do	W&.0[illegible]31	Do	Do	Do	Do	PE 86356	97526	1.89
Do	W&.0[illegible]32	Do	Do	Do	Do	GEM 37917	97526	1.89

Land Grant Percent. Deduction	Assessable Freight Charges	Amount Paid Originly	Supplemental Payments	Refunds by Carrier	Deduction by Gov't Bill Number	Deduction by Gov't Amount	Net Amount Paid	Balance Due	Tariff Reference and Item or Special Rate Authority	Government File Reference	Basis for Claim
	1257.96	1257.96			Do	585.10	672.86	585.10	Do	Do	30
	1257.96	1257.96			Do	585.10	672.86	585.10	Do	Do	Do
	1257.96	1257.96			Do	585.10	672.86	585.10	Do	Do	Do
	1257.96	1257.96			Do	585.10	672.86	585.10	Do	Do	Do
	1257.96	1257.96			Do	585.10	672.86	585.10	Do	Do	Do
	1257.96	1257.96			Do	585.10	672.86	585.10	Do	Do	Do
	1257.96	1257.96			Do	585.10	672.86	585.10	Do	Do	Do
	1257.96	1257.96			Do	585.10	672.86	585.10	Do	Do	Do
	1257.96	1257.96			Do	585.10	672.86	585.10	Do	Do	Do
	1257.96	1257.96			Do	585.10	672.86	585.10	Do	Do	Do

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Statement showing amounts due Bangor and Aroostook Railroad Company from the United States representing differences account disputed application of rates on shipments of incendiary bombs

B and A R R Bill Number	Government Bill of Lading No.	Date of Shipment	Point of Origin	Destination	Commodity Description Including Packing	Car No. and Initial	Weight	Rate
Do	#84835	5-15-44	Do	Do	Do	MA4619	77516	1.99
Do	#84836	Do	Do	Do	Do	[illegible]	77516	1.99
Do	#84837	Do	Do	Do	Do	[illegible]	77516	1.99
							[illegible]	[illegible]

Land Grant Percent. Deduction	Reasonable Freight Charges	Amount Paid Originally	Supplemental Payments	Refund by Carrier	Deductions by Gov't Bill Number	Deductions by Gov't Amount	Net Amount Paid	Balance Due	Tariff Reference and Item or Special Rate Authority	Government File Reference	Basis for Claim
	1257.96	1257.96			Do	586.30	671.66	586.30	Do	Do	Do
	1257.96	1257.96			Do	586.30	671.66	586.30	Do	Do	Do
	1257.96	1257.96			Do	586.30	671.66	586.30	Do	Do	Do
	[illegible]	[illegible]				[illegible]	[illegible]	[illegible]			

Statement showing amounts due Bangor and Aroostook Railroad Company from the United States representing differences account disputed application of rates on shipments of incendiary bombs

Road A RR Bill Number	Government Bill of Lading No.	Date of Shipment	Point of Origin	Destination	Commodity Description Including Packing	Car No. and Initial	Weight	Rate
7257 (19th)	W6,058,390	6-27-44	Lubec, Me.	Searsport, Me.	816 Demo Fireworks Bombs, Incendiary 20# M1741 E.P.Filled W/O Service Fuse	RTC 777307	$1715	2.98
Do	W6,058,396	Do	Do	Do	Do	RDG 5579	$1715	2.98
Do	W6,058,395	Do	Do	Do	Do	SLSF 241582	$1715	2.98
Do	W6,058,389	6-26-44	Do	Do	Do	RTC 779568	$1715	2.98
Do	W6,058,387	Do	Do	Do	Do	SLSF 241859	$1715	2.98
Do	W6,058,386	Do	Do	Do	Do	SAB 19588	$1715	2.98
Do	W6,058,385	Do	Do	Do	Do	SC 19608	$1715	2.98
Do	W6,058,379	Do	Do	Do	799 Demo Fireworks, Bombs Incendiary 20# M1741 E.P.Filled W/O Service Fuse			
Do	W6,058,378	Do	Do	Do	816 Demo Do	RTC 777775	$1715	2.98
Do	W6,058,376	Do	Do	Do	816 Demo Fireworks	SAB 19586	$1715	2.98

Land Grant Percent. Deduction	Assessable Freight Charges	Amount Paid Originly	Supplemental Payments	Refund by Carrier	Deduction by Gov't Bill Number	Deduction by Gov't Amount	Net Amount Paid	Balance Due	Tariff Reference and Item or Special Rate Authority	Government File Reference	Basis for Claim
	$8,37.31	$8,37.31			2189 3095 2344 3095	$268.57	1196.74	$268.57	Carlton's 100 A-167 Sec.IV-268	A-240 18,683 A&A R.R.E.	Shipment Consisted of Complete Explosive Incendiary Bombs
Do	$8,37.31	$8,37.31			Do	$268.57	1196.74	$268.57	Do	Do	Do
Do	$8,37.31	$8,37.31			Do	$268.57	1196.74	$268.57	Do	Do	Do
Do	$8,35.11	$8,35.11			Do	$268.57	1199.54	$268.57	Do	Do	Do
Do	$8,35.11	$8,35.11			Do	$268.57	1199.54	$268.57	Do	Do	Do
Do	$8,37.31	$8,37.31			Do	$268.57	1196.74	$268.57	Do	Do	Do
Do	$8,35.11	$8,35.11			Do	$268.57	1199.54	$268.57	Do	Do	Do
Do	$2176.36	$2176.36			Do	$113.16	1061.80	$113.16	Do	Do	Do
Do	$8,39.51	$8,39.51			Do	$268.57	1196.94	$268.57	Do	Do	Do
Do	$8,39.51	$8,39.51			Do	$268.57	1196.94	$268.57	Do	Do	Do

Statement showing amounts due Bangor and Aroostook Railroad Company from the United States representing differences account disputed application of rates on shipments of incendiary bombs

B and A RR Bill Number	Government Bill of Lading No.	Date of Shipment	Point of Origin	Destination	Commodity Description Including Packing	Car No. and Initial	Weight	Rate
Do	W6,958,375	6-16-44	Lubec, Calais.	Searsport, Me.	750 Bombs Fireworks Incendiary Bombs 100#	CBQ 213052	77905	2.98
Do	W6,958,397	6-19-44	Lubec, Calais.	Do	810 Bombs Fireworks	MKT 241368	81715	2.98
Do	W6,958,377	6-16-44	Lubec, Calais.	Do	810 Bombs Fireworks Incendiary Bombs 100#	MKT 79808	81715	2.98

Land Grant Percent. Deduction	Reasonable Freight Charges	Amount Paid Originally	Supplemental Payments	Refunded by Carrier	Deduction by Gov't Bill Number	Deduction by Gov't Amount	Net Amount Paid	Balance Due	Tariff Reference and Item or Special Rate Authority	Government File Reference	Basis for Claim
	$178.76	$178.76			Do	1113.16	1065.60	1113.16	Do	Do	Do
	857.31	857.31			Do	1858.57	1196.74	1858.57	Do	Do	Do
	857.12	857.12			Do	1858.57	1197.48	1858.57	Do	Do	Do
	$1159.13	$1159.13				1598.59 1812.66 [illegible]	1598.54	1598.59 1812.66 [illegible]			

* Return Weighing & Inspection Bureau Forwarding weight certificate and claim approved by G.A.G. Labor dated 9/11/44 Claim No. 41856

Statement showing amounts due Ranger and Arcadian Railroad Company from the United States representing differences account disputed application of rates on shipments of boundary tanks

Bond & Bill Number	Government Bill of Lading No.	Date of Shipment	Point of Origin	Destination	Commodity Description including Packing	Car No. and Initial	Weight	Rate
460 (Bk)	W2536619	1-20-18	Bethel[illegible], Ala.	Hampton, Ala.	810 Steam Fireworks 100#	RTC 33183	81500	2.98
do	W2536619	1-20-18	do	do	810 Steam Fireworks 9 100#	GNJ 15909	81000	2.98

Lead Cross Planned, Detected	Reasonable Freight Charges	Amount Paid Originally	Supplemental Payments	Refund by Carrier	Deduction by Gov't Audit Number	Deduction by Gov't Amount	Net Amount Paid	Balance Due	Tariff Rider or Special Rate Authority	Government File Reference	Basis for Claim
	693.77	693.77							Exclusive 222 1-20 Rate Selection		Shipment Returned as Boundary Tank
	708.45	708.45					330.33	597.45			do

Statement showing amounts due Bangor and Aroostook Railroad Company from the United States representing differences account disputed application of rates on shipments of incendiary bombs

B and A RR Bill Number	Government Bill of Lading No.	Date of Shipment	Point of Origin	Destination	Commodity Description Including Packing	Car No. and Initial	Weight	Rate
6453(1946)	WTLF5Mk72	4-29-44	Huntsville, Ala.	Searsport, Me.	750 Bombs Fireworks B 100F ML722 Bombs	CBAQ 238962	69000	2.98
Do	WTLF5Mk73	Do	Do	Do	510 Bombs Fireworks B 100F ML722 Bombs	IC 35909	73100	2.98
Do	WTLF5Mk70	Do	Do	Do	750 Bombs Fireworks B 100F ML722 Bombs	WTC 118477	71500	2.98
Do	WTLF5Mk71	Do	Do	Do	Do	CBAQ 95398	71800	2.98
Do	WTLF5Mk74	Do	Do	Do	Do	BAR 71716	69800	2.98
Do	WTLF5Mk75	Do	Do	Do	Do	CBAQ 133578	69800	2.98
Do	WTLF5Mk76	Do	Do	Do	Do	CBW 46766	69900	2.98
Do	WTLF5Mk77	Do	Do	Do	Do	IC 95695	71600	2.98
Do	WTLF5Mk79	Do	Do	Do	Do	CBAQ 97-44	72100	2.98

Land Grant Percent. Deduction	Assessable Freight Charges	Amount Paid Originally	Supplemental Payments	Refund by Carrier	Deduction by Gov't Bill Number	Deduction by Gov't Bill Amount	Net Amount Paid	Balance Due	Tariff Reference and Item or Special Rate Authority	Government File Reference	Basis for Claim
	593.43	593.43			Do	Do	127.89	465.53	Do	Do	Do
	644.67	644.67			Do	Do	110.31	534.36	Do	Do	Do
	689.45	689.45			Do	Do	146.43	483.02	Do	Do	Do
	593.97	593.97			Do	Do	108.93	485.04	Do	Do	Do
	599.43	599.43			Do	Do	134.93	464.78	Do	Do	Do
	584.27	584.27			Do	Do	100.19	484.08	Do	Do	Do
	608.58	608.58			Do	Do	136.37	472.21	Do	Do	Do
	605.14	605.14			Do	Do	129.80	469.34	Do	Do	Do
	579.47	579.47			Do	Do	99.35	480.12	Do	Do	Do
	6839.88	6839.88				5458.30	1381.58	5458.30			

Statement showing amounts due Bangor and Aroostook Railroad Company from the United States representing differences account disputed application of rates on shipments of incendiary bombs

B and A R R Bill Number	Government Bill of Lading No.	Date of Shipment	Point of Origin	Destination	Commodity Description Including Packing	Car No. and Initial	Weight	Rate
7789 (1944)	WT 4058,376	6-26-44	Ladora, Colo.	Searsport, Me.	720 Bombs Fireworks Bombs, Incendiary 100# M/702 HP Filled W/O Burster Tube	CBQ 131792	72965	2.98
Do	WT 4058A,35	6-30-44	Do	Do	720 Bombs Incendiary Bombs 100#	MILW 702130	72965	2.98
Do	WT 4058AA3	Do	Do	Do	Do	B&M 12876	72965	2.98

Land Grant Percent. Deduction	Assessable Freight Charges	Amount Paid Originally	Supplemental Payments	Refunded by Carrier	Deduction by Gov't Bill Number	Deduction by Gov't Amount	Net Amount Paid	Balance Due	Tariff Reference and Item or Special Rate Authority	Government File Reference	Basis for Claim
	2178.76	2178.76			2170(1868	1179.01	1006.75	1179.01	Carlotta ICC A-767 see 22-11d	T-660-Filer 172976, 6/44, R.R.B.	Shipment Contested of Complete Explosive Incendiary Bombs
	2176.36	2176.36			2170(1868 29AA	1179.01	1008.35	1179.01		Do	Do
	2176.36	2176.36			2170(1868 29AA	1179.01	1008.35	1179.01	Do	Do	Do
	6527.48	6527.48				3516.03	3011.45	3516.03			

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Statement showing amounts due Bangor and Aroostook Railroad Company from the United States representing differences account disputed application of rates on shipments of incendiary bombs

B and A RR Bill Number	Government Bill of Lading No.	Date of Shipment	Point of Origin	Destination	Commodity Description including Packing	Car No. and Initial	Weight	Rate
6456 (1954)	WT 1660867	6-27-44	Huntersville, Ala.	Shreveport, La.	630 Bomb Fireworks N, NOIBN, Bombs E.P. Filled	RTD 97654	21700	2.05¢
Do	WT 1660868	Do	Do	Do	Do	NIDX 71399	18680	2.05¢
Do	WT 1660869	Do	Do	Do	Do	IC 25397	18000	2.05¢
Do	WT 1660870	Do	Do	Do	Do	PRR 80574	18700	2.05¢
Do	WT 1660872	Do	Do	Do	Do	MKT 95187	18000	2.05¢
Do	WT 1660872	Do	Do	Do	Do	NP 42593	19100 or 20000	2.05¢

Land Grant Percent. Deduction	Accountable Freight Charges	Amount Paid Originally	Supplemental Payments	Refund by Carrier	Deduction by Gov't Bill Number	Deduction by Gov't Amount	Net Amount Paid	Balance Due	Tariff Reference and Item or Special Rate Authority	Government File Reference	Basis for Claim
	1287.54	1287.54			6456(1952)	568.40	719.52	568.40	Customer's ICC I-600 Section IV-Ist Rule, GRR of 1st Class Plus 5¢ Perm 15% Increase Rates Control ICC C-4563	SE-SE 613282	Shipment Consisted of Complete Explosive Incendiary Bombs
	1296.43	1296.43			Do	558.43	730.00	558.43	Do	Do	Do
	1276.10	1276.10			Do	553.08	723.02	553.08	Do	Do	Do
	1288.69	1288.69			Do	557.31	731.38	557.31	Do	Do	Do
	1276.10	1276.10			Do	553.08	723.02	553.08	Do	Do	Do
	1287.50	1287.50			Do	566.40	583.48	566.40	Do	Do	Do
	7618.56	7618.56				3808.72	3809.84	3808.72			

Statement showing amounts due Bangor and Aroostook Railroad Company from the United States representing differences account disputed application of rates on shipments of incendiary bombs

B and A RR Bill Number	Government Bill of Lading No.	Date of Shipment	Point of Origin	Destination	Commodity Description including Packing	Car No. and Initial	Weight	Rate
7730(1944)	W 1988449	6-20-44	Ledoux, Calif.	Searsport, Me.	750-Bomb Fireworks Incendiary Bombs 100# SLAC	SAL 13434	75965	7.98

Land Grant Percent. Deduction	Assessable Freight Charges	Amount Paid Originally	Supplemental Payments	Refunded by Carrier	Deductions by Gov't Bill Number	Deductions by Gov't Amount	Net Amount Paid	Balance Due	Tariff Reference and Item or Special Rate Authority	Government File Reference	Basis for Claim
	2176.36	2176.36			14	38.06			Carlton's I.C.C. A-767 Section 22-3rd Ost.	B-580 15474 B/A R.R.S	Shipment construed as complete explosive incendiary bombs
					175	595.76					
					178	531.18					
					182	152.08					
					119	5760.71					
					116	6155.50					
					108	215.11					
					105	163.79					
					11	159.89					
					98	357.62					
					176	325.18					
					177	512.36					
					179	324.98					
					180	594.76					
					181	10.53					
					183	594.98					
					184	591.28					
					Loose(4)	5527.32					
					12	60.84					
						1098.73					
					185	530.98					
					186	589.29					
					187	160.17					
					188	357.26					
					189	397.50					
					190	589.29					
					191	14.84					
					192	421.17					
					193	18.18					
					194	478.03					
					195	340.10					
					196	5.76					
					197	63.36					

Statement showing amounts due Bangor and Aroostook Railroad Company from the United States representing differences account disputed application of rates on shipments of incendiary bombs

Lead A. RR Bill Number	Government Bill of Lading No.	Date of Shipment	Point of Origin	Destination	Commodity Description Including Packing	Car No. and Initial	Weight	Rate
7290(1944)	WV 1958116	6-20-44	Lenore, Okla.	Searsport, Me.	780 Boxes Fireworks Incendiary Bombs 100# GLAS	Penn. 96438	78905	2.98
Do	WV 1958399	6-17-44	Do	Do	810 Do	PFC 108337	81715	2.98
Do	WV 1958405	Do	Do	Do	Do	PFC 139315	81715	2.98
Do	WV 1958406	Do	Do	Do	Do	PFC 175789	81715	2.98
Do	WV 1958407	Do	Do	Do	Do	GLIN 909583	81715	2.98
Do	WV 1958409	Do	Do	Do	780 Do	GN 38581	78905	2.98
Do	WV 1958411	6-19-44	Do	Do	810 Do	BAO 13697	81715	2.98
Do	WV 1958415	Do	Do	Do	Do	GLIN 713663	81715	2.98
Do	WV 1958416	Do	Do	Do	Do	BAO 16997	81715	2.98
Do	WV 1958417	Do	Do	Do	Do	GN 11768	81715	2.98
Do	WV 1958418	Do	Do	Do	Do	PFC 114308	81715	2.98
Do	WV 1958419	Do	Do	Do	Do	PFC 121682	81715	2.98

Land Grant Percent. Deduction	Assessable Freight Charges	Amount Paid Originally	Supplemental Payments	Refunds by Carrier	Deduction by Gov't Bill Number	Deduction by Gov't Amount	Net Amount Paid	Balance Due	Tariff Reference and Item or Special Rate Authority	Government File Reference	Basis for Claim
	7176.56	7176.56							Do	Do	Do
	6537.31	6537.31							Do	Do	Do
	6537.31	6537.31							Do	Do	Do
	6537.31	6537.31							Do	Do	Do
	6535.11	6535.11							Do	Do	Do
	7176.56	7176.56							Do	Do	Do
	6535.11	6535.11							Do	Do	Do
	6535.11	6535.11							Do	Do	Do
	6535.11	6535.11							Do	Do	Do
	6535.11	6535.11							Do	Do	Do
	6535.11	6535.11							Do	Do	Do
	6537.31	6537.31							Do	Do	Do

Statement showing amounts due Bangor and Aroostook Railroad Company from the United States representing differences account disputed application of rates on shipments of incendiary bombs

B and A RR Bill Number	Government Bill of Lading No.	Date of Shipment	Point of Origin	Destination	Commodity Description Including Packing	Car No. and Initial	Weight	Rate
Do	MV 1958A35	Do	Do	Do	Do	BPT 27658	81715	2.98
Do	MV 1958A36	6-20-44	Do	Do	Do	PTC 136736	81715	2.98
Do	MV 1958A38	Do	Do	Do	780 Do	GEM 67982	77965	2.98
Do	MV 1958A39	6-19-44	Do	Do	Do	RTC 100668	77965	2.98
Do	MV 1958A32	6-20-44	Do	Do	Do	168 1908	77965	2.98
Do	MV 1958A30	Do	Do	Do	Do	IC 186075	77965	2.98
Do	MV 1958A37	Do	Do	Do	Do	BP 12698	77965	2.98
Do	MV 1958A34	Do	Do	Do	Do	CSRQ 16886	77965	2.98
Do	MV 1958A33	Do	Do	Do	Do	CSRQ 95350	77965	2.98
Do	MV 1958A31	Do	Do	Do	810 Do	BP 43606	81715	2.98

Land Grant Percent. Deduction	Assessable Freight Charges	Amount Paid Originly	Supplemental Payments	Refunds by Carrier	Deduction by Gov't Bill Number	Deduction by Gov't Amount	Net Amount Paid	Balance Due	Tariff Reference and Item or Special Rate Authority	Government File Reference	Basis for Claim
	2635.33	2635.33							Do	Do	Do
	2635.33	2635.33							Do	Do	Do
	2176.36	2176.36							Do	Do	Do
	2176.36	2176.36							Do	Do	Do
	2176.36	2176.36							Do	Do	Do
	2176.36	2176.36							Do	Do	Do
	2176.36	2176.36							Do	Do	Do
	2176.36	2176.36							Do	Do	Do
	2176.36	2176.36							Do	Do	Do
	2176.36	2176.36							Do	Do	Do
	2635.33	2635.33							Do	Do	Do
	53633.09	53633.09				27695.08	24136.08	27695.08			

Statement showing amounts due Bangor and Aroostook Railroad Company from the United States representing differences account disputed application of rates on shipments of incendiary bombs

B and A RR Bill Number	Government Bill of Lading No.	Date of Shipment	Point of Origin	Destination	Commodity Description Including Packing	Car No. and Initial	Weight	Rate
4103(1944)	WT 1237005	5-14-44	Huntsville, Ala.	Searsport, Me.	510 Boxes Fireworks "P" 100# M-47A2, Bombs W. P. Filled	BAL 19082	82715	2.98
Do	WT1237006	Do	Do	Do	Do	MET 76952	82715	2.98
Do	WT1237007	5-25-44	Do	Do	Do	LSI2102	73715	2.98
Do	WT1237012	5-14-44	Do	Do	590 Do	RTC 17165A	82715	2.98
Do	WT1237108	5-16-44	Do	Do	630 Do	CBAQ 97584	73715	2.98
Do	WT1237106	Do	Do	Do	780 Do	CBAQ 133569	73715	2.98
Do	WT1186329	5-21-44	Do	Do	630 Do	GBW 59956	63000	2.98
Do	WT1186395	Do	Do	Do	Do	GTW 460090	61700	2.98
Do	WT1186386	Do	Do	Do	Do	MP 15110	68300	2.98

Land Grant Percent. Deduction	Accessorial Freight Charges	Amount Paid Originally	Supplemental Payments	Refunded by Carrier	Deduction by Gov't Bill Number	Deduction by Gov't Amount	Net Amount Paid	Balance Due	Tariff Reference and Item or Special Rate Authority	Government File Reference	Basis for Claim
	2463.46	2463.46			17 16A 443 2057 (1944) 97	2553.75 1277.46 123.96 8098.34 2336.97	1857.97	610.49	Durlete's ICC 2-357 Section 22-1A-f Quotation	C-060-C 78035 T/A S.B.E.	Shipment Consisted of Complete Explosive Incendiary Bombs
	2463.46	2463.46			Do		1857.97	610.49	Do	Do	Do
	2463.46	2463.46			Do		1857.97	610.49	Do	Do	Do
	2463.46	2463.46			Do		1857.97	610.49	Do	Do	Do
	2177.07	2177.07			Do		1687.56	489.51	Do	Do	Do
	2177.07	2177.07			Do		1687.56	489.51	Do	Do	Do
	1296.65	1296.65			Do		731.00	565.65	Do	Do	Do
	1280.27	1280.27			Do		788.34	552.03	Do	Do	Do
	1280.27	1280.27			Do		722.87	557.40	Do	Do	Do

Statement showing losses due Bangor and Aroostook Railroad Company from the United States representing differences account disputed application of rates on shipments of incendiary bombs

Road A R'R Bill Number	Government Bill of Lading No.	Date of Shipment	Point of Origin	Destination	Commodity Description Including Packing	Car No. and Initial	Weight	Rate
Do	WT 1686397	5-13-43	Bethel Me.	Searsport, Me.	400 Do	ISAM 43726	57400	2.98
Do	WT 1686399	5-21-43	Do	Do	770 Do	PE 33778	76900	2.98

Land Grant Rates Deficiency	Freight Charges	Amount Originally Paid	Supplemental Payments	Refunds by Carrier	Deduction by Gov't Bill Number	Deduction by Gov't Amount	Net Amount Paid	Balance Due	Tariff Reference and Docket or Special Authority	Government File Reference	Basis for Claim
	1286.33	1286.33			Do		680.66	585.49	Do	Do	Do
	1539.20	1539.20			Do		969.07	570.13	Do	Do	Do
	2806.70	2806.70				648.48	1649.55	1156.62			

Statement showing amounts due Bangor and Aroostook Railroad Company from the United States representing differences account disputed application of rates on shipments of incendiary bombs

Bond A Bill Number	Government Bill of Lading No.	Date of Shipment	Point of Origin	Destination	Commodity Description Including Packing	Car No. and Initial	Weight	Rate
7308 (1944)	WT 1937105	5-16-44	Bunnell, Fla.	Bucksport, Me.	710 Bombs Fireworks 3 100F M.742 Bombs K.F.Filled	NTC 121692	51725	2.98

Land Grant Percent. Deduction	Assessable Freight Charges	Amount Paid Originly	Supplemental Payments	Refunded by Carrier	Deduction by Gov't Bill Number	Deduction by Gov't Amount	Net Amount Paid	Balance Due	Tariff Reference and Item or Special Rate Authority	Government File Reference	Basis for Claim
	$63.90	$63.90			4313(1952)	997.84	Cr. 433.94	997.84	Carlotta's A-767 Section 22-Int Quotation	T-560 (St-178993 W.B.L. 6/24	Shipment Contested of Complete Explosive Incendiary Bombs

*When the Government made a deduction against a current bill rendered, such deduction did not necessarily apply to the alleged overcharge on a particular bill of lading. Rather it was the practice of the Government to apply the total amount of a group of current bills against the total amount of alleged overcharges on a group of bills of lading. It is therefore impossible to say that any particular current bill necessarily applies to a particular bill of lading. However, the total amount of deductions made from current bills is equal to the total amount of overcharges as alleged by the Government. Thus, as set forth on Sheet No. 17 shows total Deductions from current bills as $79,131.96, and likewise shows total alleged overcharges as $80,131.96.

Exhibit A
Sheet 17 of 17 Sheets

SUMMARY

Land Grant Percent. Deduction	Assessable Freight Charges	Amount Paid Originally	Supplemental Payments	Refunds by Carrier	Deduction by Gov't Bill Number	Deduction by Gov't Amount	Net Amount Paid	Balance Due	Tariff Reference and Item or Special Rate Authority	Government File Reference	Basis for Claim
Sheet 1	9158.11	9158.11				3906.29	5251.82	3906.29			
4	28933.08	28933.08				13457.30	15475.78	13457.30			
6	31159.13	31159.13				15894.59	15264.54	15894.59			
8	6839.88	6839.88				5458.30	1381.58	5458.30			
9	6527.48	6527.48				3516.03	3011.45	3516.03			
10	7418.56	7418.56				3208.72	4209.84	3208.72			
13	53411.03	53411.03				27285.01	26126.02	27285.01			
15	20806.70	20806.70				6408.48	14398.22	6408.48			
16	563.90	563.90				997.24	(433.34	997.24			
	164817.87	164817.87				80131.96	84685.91	80131.96			

62 In the United States Court of Claims

No. 104-54

[File endorsement omitted]

[Title omitted]

STATEMENT OF FACTS FOR ADMISSION UNDER RULE PRESCRIBING PROCEDURE IN RAILROAD CASES—Filed March 22, 1954

1. The plaintiff, a corporation of the State of Maine, is a common carrier by railroad over its own lines and jointly with other common carriers by railroad.

2. In 1944, the plaintiff as the final and delivering carrier performed transportation service for the defendant, from various points of origin in the United States to destination points on plaintiff's lines, as shown in the attached Exhibit A. The freight charges on the said shipments were billed by the plaintiff and were originally paid by the defendant's disbursing officers, in accordance with Section 66, Title 49, U. S. Code, and were subsequently audited by the General Accounting Office. Adjustments were made by deductions from other bills due the plaintiff by the General Accounting Office.

3. On each of the shipments in question, the applicable freight charges, on the basis of the court's decision in Union Pacific Railroad Co. v. United States, No. 49505, on April 7, 1953, the amount paid originally, the amount of any supplemental payments made by the defendant, the deductions made by the defendant from other bills due the plaintiff, the net amount paid, and the
63-80 balance due on the basis of the applicable published rates or other rate authority cited, are shown in the attached Exhibit A.

4. The deductions made by the defendant from other bills due the plaintiff were made within six years prior to March 10, 1954.

LAWRENCE CAKE,
Attorney for Plaintiff.

EXHIBIT "A" TO STATEMENT

Omitted. Printed side page 46 ante.

81 In the United States Court of Claims

[Title omitted]

DEFENDANT'S RESPONSE TO PLAINTIFF'S STATEMENT OF FACTS FOR ADMISSION AND PLAINTIFF'S SCHEDULE A UNDER RULE EFFECTIVE APRIL 1, 1953 PRESCRIBING PROCEDURE IN COMMON CARRIER CASES —Filed December 29, 1954

1. Admitted.
2. Admitted.
3. Defendant denies that there is due plaintiff the sum of $80,-131.96 and avers that should plaintiff prevail in this action the correct amount due would be $73,056.95. Attached hereto is a tabulation and computation designated Defendant's Schedules A and B and Summary Sheet setting forth the said computations and authorities relied upon where exception is taken to computations on Plaintiff's Exhibit A. Defendant further avers that the basis upon which plaintiff computed its transportation charges as set forth in its Exhibit A to the petition for shipments comprising bomb bodies filled with Napalm gel without bursters or
82 fuzes is improper; that the charges for the shipments herein concerned have heretofore been settled on the proper basis and that plaintiff is due nothing further on such shipments.
4. Admitted.

WARREN E. BURGER,
Assistant Attorney General,
Civil Division.

MARTIN E. RENDELMAN,
Attorney, Civil Division,
Department of Justice.

Schedule A to Response

Bangor and Aroostook Railroad Company

v. United States, Court of Claims No. 104-54

Sheet 1 of 1 sheets

ITEM NO.	Balance Due		Rate Authority	Remarks
	Plaintiff	U. S.		
1	3901.29			
2	10990.69			
3	13263.47			
4	5453.38			
5	3290.92			
6	3288.72			
7	25251.60			
8	6650.93			
9	997.39			
1	73056.99			Net amount due Plaintiff

83

COPY BOUND VERTICALLY

Bituminous and ... Railway Equipment Company v. ... Co. ... 64-54

Defendant's

Sheet 1 of ...

Plaintiff's Bill Number	Government Bill of Lading Number	Date of Shipment	Origin	Destination	Commodity Description (Including Packing)	Car Number and Initial	Weight	Rate	Land-grant Percentage deduction	Assessable Freight charges	Amount Paid originally	Supplemental Payment	Refunds	Deduction by Govt. Bill No.	Deduction by Govt. Amount	Net Amt. Paid	Balance Due Plaintiff	Balance Due U. S.	Date Authority	Remarks
648 (1949)	W7-930651	5-1-44	Bon Terre	Ironsides, Miss.	Bituminous Fine (Explosives Subsistence)	AT- 48429	62.5	1.15		11.56.69	13.57.96			E359 Item 9390 E333	585.10	672.86	672.86		Voucher	Bituminous Fine (Explosives Subsistence)
	W7-930693	✓	✓	✓	✓	LP 5554	✓	✓		11.58.69	13.57.96			✓	585.10	672.86	672.86		✓	✓
✓	W7-930699	✓	✓	✓	✓	[illegible]	✓	✓		11.58.69	13.57.96			✓	585.10	672.86	672.86		✓	✓
✓	W7-930695	✓	✓	✓	✓	[illegible]	✓	✓		11.58.69	13.57.96			✓	585.10	672.86	672.86		✓	✓
✓	W7-930697	✓	✓	✓	✓	[illegible]	✓	✓		11.58.69	13.57.96			✓	585.10	672.86	672.86		✓	✓
✓	W7-930698	✓	✓	✓	✓	[illegible]	✓	✓		11.58.69	13.57.96			✓	585.10	672.86	672.86		✓	✓
✓	W7-930699	✓	✓	✓	✓	[illegible]	✓	✓		11.58.69	13.57.96			✓	585.10	672.86	672.86		✓	✓
✓	W7-930700	✓	✓	✓	✓	[illegible]	✓	✓		11.58.69	13.57.96			✓	585.10	672.86	672.86		✓	✓
✓	W7-930701	5/5/44	✓	✓	✓	[illegible]	✓	✓		11.58.69	13.57.96			✓	585.10	672.86	672.86		✓	✓
✓	W7-930703	✓	✓	✓	✓	[illegible]	✓	✓		11.58.69	13.57.96			✓	585.10	672.86	672.86		✓	✓
✓	W7-930704	✓	✓	✓	✓	[illegible]	✓	✓		11.58.69	13.57.96			✓	585.10	672.86	672.86		✓	✓
✓	W7-930705	✓	✓	✓	✓	[illegible]	✓	✓		11.58.69	13.57.96			✓	585.10	672.86	672.86		✓	✓

Engraved. Rem. Co. & Railroad Company v. Hunt et al. U.S. Circuit Court. Vam. Dec. 1874-5 [illegible]

89 In the United States Court of Claims

[Title omitted]

DEFENDANT'S ANSWER—Filed December 29, 1954

Defendant for its answer to the petition herein alleges as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits that plaintiff performed transportation services for defendant as alleged in paragraph 2 of the petition except that defendant denies that the articles transported were described solely as incendiary bombs or that said articles were in fact incendiary bombs. Defendant avers that the shipments were variously described, usually as comprising "Fireworks 'B' 100# M47A2 BOMBS, NP Filled," and as "Fireworks, BOMBS Incendiary, 100 lb., M47A2, NP filled, w.o. burster fuze or wire."

3. Admits the allegations contained in paragraph 3 of the petition.

90 4. Denies the allegations contained in paragraph 4 of the petition and avers that in the event that plaintiff should prevail in this action then the proper amount due would be $73,-056.95.

5. Does not have sufficient knowledge or information upon which to predicate a belief with respect to the allegations contained in paragraph 5 of the petition and therefore denies the same.

6. Denies each and every allegation in the petition not heretofore admitted, denied or qualified.

AS A COUNTERCLAIM

7. Defendant alleges that on bills of lading listed in plaintiff's exhibit A to the petition under Bills No. 6103 (1944), 5610 (1944), 7269 (1944), 6453 (1944), 6454 (1944) and 7217 (1944) there is presently due to defendant from plaintiff the sum of $8,918.15 on the basis of the charges as computed by defendant for the shipments therein concerned.

91 WHEREFORE, defendant demands judgment:

1. Dismissing the petition with costs taxed against plaintiff.

2. For $8,918.15 on its counterclaim with interest thereon as provided by law.

WARREN E. BURGER,
Assistant Attorney General,
Civil Division.

MARTIN E. RENDELMAN,
Attorney, Civil Division,
Department of Justice.

92 In the United States Court of Claims

[Title omitted]

PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS OR FOR SUMMARY JUDGMENT UNDER RULE 51—Filed February 8, 1955

The plaintiff moves for judgment on the pleadings or for summary judgment under Rule 51, in the sum of $73,056.95, on the ground that the defendant's answer and response to the plaintiff's statement of facts for admission show that the amount stated is due on the basis of the court's decision in a previous case, *Union Pacific Railroad Company* v. *United States*, 125 C. Cls. 390, and there is no genuine issue as to any material fact and the plaintiff is entitled to judgment as a matter of law.

LAWRENCE CAKE,
Attorney for Plaintiff.

93 STATEMENT

The facts stated in the petition and in the plaintiff's statement of facts for admission, as admitted by the defendant's answer and response to the statement of facts for admission, are as follows:

1. The plaintiff is a common carrier by railroad over its own lines and jointly with other common carriers by railroad.

2. In 1944 the plaintiff and its connections performed transportation service for the defendant by carrying a number of shipments of articles decribed in the bills of lading as

Fireworks, B. M47A2 Bombs N.P. Filled;
Fireworks, B. 100# Bombs N.P. Filled;
Incendiary Bombs Inflammable Solids;
Fireworks Bombs Incendiary 100# M47A2 N.P. Filled W/O Bursters Fuze;
Fireworks Incendiary Bombs 100#;
Fireworks B 100#;
Fireworks B 100# M47A2 Bombs N.P. Filled;
Fireworks 100# M47A2 Bombs N.P. Filled;
Incendiary Bombs 100#;

from various points of origin to a destination point on plaintiff's lines.

(Par. 2 of plaintiff's statement of facts for admission and accompanying verified Schedule A, admitted by defendant's response thereto).

3. The transportation charges for the said shipments are claimed by the plaintiff on the basis of classification of the said articles

as incendiary bombs, under Item 1820 of the freight classification, and the rates applicable thereto. The charges paid by
94 the defendant, through settlements made by the General Accounting Office, are on the basis of classification of the articles shipped as combination articles under Rule 18 of the freight classification and the rates applicable thereto.

(Par. 3 of petition, admitted by defendant's answer).

4. On the basis claimed by plaintiff, and the court's decision in *Union Pacific Railroad Company* v. *United States*, No. 49505, the balance due the plaintiff, as reported by the General Accounting Office, is $73,056.95.

(Par. 3 of plaintiff's statement of facts for admission, and defendant's response thereto).

The issue in this case is identical with the issue tried in the *Union Pacific* case, 125 C. Cls. 390, whether incendiary bombs filled with NP or PT1 incendiary gels, but without bursters and fuzes, should be classified and rated as incendiary bombs, as contended by the plaintiff, or as combination articles under Rule 18 or by analogy to other lower rated articles under Rule 17 of the freight classification, as contended by the General Accounting Office. The *Union Pacific* case was decided on April 7, 1953, on the issue of liability. The defendant filed a motion for a new trial which was overruled on July 13, 1953. Final judgment for the plaintiff was entered on November 3, 1953. There was no application for certiorari. An appropriation was made for payment of the judgment and it has been paid.

In a similar case, *Southern Pacific Company* v. *United States*, No. 49628, judgment for the plaintiff was entered on May 4, 1954, on a stipulation. 128 C. Cls. 773. That judgment likewise was reported for appropriation and has been paid.

95 The plaintiff in this case is entitled to judgment for the amount stated above which is the amount due, as reported by the General Accounting Office, on the basis of the court's decision in the *Union Pacific* case.

LAWRENCE CAKE,
RAYMOND A. NEGUS,
Attorneys for Plaintiff.

96 In the United States Court of Claims

No. 250-54

SEABOARD AIR LINE RAILROAD COMPANY, PLAINTIFF,

v.

THE UNITED STATES, DEFENDANT

PETITION—Filed June 24, 1954

To the Honorable Chief Judge and Associate Judges of the United States Court of Claims:

The plaintiff, Seaboard Air Line Railroad Company, respectfully represents:

1. Plaintiff is a corporation organized and existing under the laws of the State of Virginia and as such corporation now is, and has been since August 1, 1946, engaged as a common carrier by railroad, in the transportation of persons and property for hire, in both intrastate and interstate commerce over its own lines and jointly with other carriers.

97 2. On August 1, 1946, plaintiff became the successor in ownership and operation of the properties of the Seaboard Air Line Railway Company, which latter company prior to December 23, 1930, operated an extensive railroad system comprising approximately forty-two hundred (4,200) miles of railroad lines within and through the States of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama. That Legh R. Powell, Jr., and Henry W. Anderson were appointed Receivers of the properties and assets of said Seaboard Air Line Railway Company by orders of the District Court of the United States for the Eastern District of Virginia on December 23, 1930, and December 30, 1932, respectively, and as such Receivers operated said line of railroad until August 1, 1946.

3. On April 12, 1945, a Final Decree of Foreclosure and Sale was entered and Tazewell Taylor was appointed Special Master to sell all the properties and assets of said Seaboard Air Line Railway Company which sale took place on May 31, 1945. By Bill of Sale dated July 1, 1946, pursuant to decrees of the District Court of the United States for the Eastern District of Virginia and for the Southern District of Florida, the said Tazewell Taylor, Special Master, and others, conveyed to the Seaboard Air Line Railroad Company, the plaintiff herein, all of the personal property, including rolling stock, accounts receivable, etc., which had been sold pursuant to said Final Decree of Foreclosure. Said Bill of Sale was executed and delivered on August 1, 1946, and trans-

ferred by operation of law to plaintiff the claim hereinafter referred to against the United States of America.

4. Plaintiff, Seaboard Air Line Railroad Company, and/or Legh R. Powell, Jr., and Henry W. Anderson, as Receivers of
98 the Seaboard Air Line Railway Company, are hereinafter referred to as plaintiff.

5. In 1944 plaintiff performed transportation services for the defendant over its own lines and jointly with other carriers whose lines connect with the plaintiff's lines, by carrying a number of shipments of articles described as incendiary bombs as shown in statements identified as Schedules A and B, filed herewith and by reference made part hereof.

6. For the transportation services rendered, the charges claimed by the plaintiff are on the basis of classification of the articles shipped as "Bombs, Incendiary", pursuant to Item 1820 of the Consolidated Freight Classification, and the rates applicable thereto. The settlements made by the General Accounting Office, after audit by means of deductions from subsequent bills made on or after June 24, 1948, are on the basis of classification as combination articles under Rule 18 of the Consolidated Freight Classification and the rates applicable thereto. Further details of the said shipments with reference to the bills of lading, dates of shipments, plaintiff's bill numbers, and the transportation charges billed and paid, are shown in Schedules A and B hereto.

7. Plaintiff avers that the correct and lawful transportation charges on the said shipments are as stated in Schedules A and B hereto, that the defendant has refused and failed to pay the correct and lawful charges as stated, and that there is due and owing plaintiff from the United States a balance of $28,829.55.

8. Plaintiff further avers that no action, suit or process is pending in any other court on account of this claim; that no action has been had thereon in Congress or by any of the executive
99 departments or agencies other than as herein stated; that plaintiff is the owner of the claim and no assignment or transfer of the whole or any part thereof or any interest therein has been made, other than as stated in paragraph 3 above.

WHEREFORE, plaintiff prays judgment against the defendant for $28,829.55.

SEABOARD AIR LINE RAILROAD COMPANY
By LAWRENCE CAKE,
Its Attorney.

SEABOARD AIR LINE RAILROAD COMPANY
Norfolk, Virginia
LAWRENCE CAKE,
1001 Connecticut Avenue,
Washington 6, D. C.,
Attorney of Record.

100 [File endorsement omitted]

In the United States Court of Claims

No. 250-54

[Title omitted]

STATEMENT OF FACTS FOR ADMISSION UNDER ORDER OF MARCH 11, 1953, PRESCRIBING PROCEDURE IN RAILROAD CASES—Filed July 23, 1954

1. The plaintiff, a corporation of the State of Virginia, is a common carrier by railroad over its own lines and jointly with other common carriers by railroad.

2. In 1944, the plaintiff as the final and delivering carrier performed transportation service for the defendant, from various points of origin in the United States to destination points on plaintiff's lines, as shown in the attached Schedules A and B. The freight charges on the said shipments were billed by the plaintiff and were originally paid by the defendant's disbursing officers, in accordance with Section 66, Title 49, U. S. Code, and were subsequently audited by the General Accounting Office. Adjustments were made by deductions from other bills due the plaintiff by the General Accounting Office.

3. On each of the shipments in question, the applicable freight charges, on the basis of the court's decision in Union Pacific Railroad Co. v. United States, No. 49505, on April 7, 1953, the amount paid originally, the amount of any supplemental payments made by the defendant, the deductions made by the defendant from other bills due the plaintiff, the net amount paid, and the
101 balance due on the basis of the applicable published rates or other rate authority cited, are shown in the attached Schedules A and B.

4. The deductions made by the defendant from other bills due the plaintiff were made within six years prior to June 24, 1954.

LAWRENCE CAKE,
Attorney for Plaintiff.

"[illegible] AIRLINE RAILROAD EQUIPMENT V. UNITED STATES" [illegible] AS CLAIMS NO. 350-54

Sheet 5 of 8 sheets

DETAIL OF GET AMOUNTS PAID ON TRAFFIC PASSING TO AND BEYOND TRANSIT STATION

Line Item	Through Shipment	Rate Authority	Govt. GTL No.	Date	From	Transit Station	To	Commodity	Car No.	Weight	Rate	Local Grant	Paid Origin	Carrier	Bill No.	Rate Charged	Refund	Deductions for Non-Transit Bill No.	Deductions for Non-Transit Amount	Net Paid	Balance Due Claimed	Balance Due G. L.	Remarks
	1799.02	[illegible]	[illegible]	8-2-46		[illegible]	[illegible]	[illegible]	[illegible]	17 300	45		44.23	[illegible]	[illegible]	–	–	[illegible]	791.91	1241.34			[illegible]
	2.96	[illegible]				[illegible]	[illegible]	[illegible]		70	4th		46.85										To be added to
	2.97							[illegible]		70			2.97										[illegible]
	.92									60			1.90										[illegible]
	1835.07		[illegible]	8-16-46	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	–	–	–	–	1240.84			[illegible]
						[illegible]		[illegible]					[illegible]							[illegible]	76.68		[illegible]

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112 In the United States Court of Claims

[Title omitted]

DEFENDANT'S ANSWER—Filed January 31, 1955

Defendant for its answer to the petition herein alleges as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Defendant does not have sufficient knowledge or information upon which to predicate a belief with respect to the allegations contained in paragraphs 2 and 3 of the petition and therefore denies the same.

3. Admits the allegations contained in paragraph 4 of the petition.

4. Admits the allegations contained in paragraph 5 of the petition except that defendant avers that the articles were described on the pertinent bills of lading as "Fireworks 'B' 500# M47A2 Incen. Bombs, NP Filled", and in at least one instance as
113 "Fireworks, BOMBS, Incendiary, 100 lb., M47A2 NP filled, w/o burster, fuze or wire."

5. Admits the allegations contained in paragraph 6 of the petition except as qualified by paragraph 3 of Defendant's Response to Plaintiff's Request for Admission of Facts.

6. Denies the allegations contained in paragraph 7 of the petition.

7. Defendant does not have sufficient knowledge or information upon which to predicate a belief with respect to allegations contained in paragraph 8 of the petition and therefore denies the same.

8. Denies each and every allegation in the petition not heretofore admitted, denied or qualified.

WHEREFORE defendant demands judgment dismissing the petition and assessing costs against plaintiff as provided by law.

WARREN E. BURGER,
Assistant Attorney General,
Civil Division.

MARTIN E. RENDELMAN,
Attorney, Civil Division,
Department of Justice.

PREVIOUS FOLDOUTS TOO
LARGE FOR FILMING

114 In the United States Court of Claims

[Title omitted]

PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS OR FOR SUMMARY JUDGMENT UNDER RULE 51—Filed February 8, 1955

The plaintiff moves for judgment on the pleadings or for summary judgment under Rule 51, in the sum of $28,561.93, on the ground that the defendant's answer and response to the plaintiff's statement of facts for admission show that the amount stated is due on the basis of the court's decision in a previous case, *Union Pacific Railroad Company* v. *United States*, 125 C. Cls. 390, and there is no genuine issue as to any material fact and the plaintiff is entitled to judgment as a matter of law.

LAWRENCE CAKE,
Attorney for Plaintiff.

115 STATEMENT

The facts stated in the petition and in the plaintiff's statement of facts for admission, as admitted by the defendant's answer and response to the statement of facts for admission, are as follows:

1. The plaintiff is a common carrier by railroad over its own lines and jointly with other common carriers by railroad.

2. In 1944 the plaintiff and its connections performed transportation service for the defendant by carrying a number of shipments of articles described in the bills of lading as

Fireworks 'B' 500# M47A2 Incendiary Bombs NP Filled;
Fireworks, Bombs Incendiary, 100# M47A2,
NP Filled, without Burster fuze or wire;

from various points of origin to destination points on plaintiff's lines.

(Par. 5 of petition and Par. 2 of plaintiff's statement of facts for admission and accompanying Schedules A and B, as admitted by defendant's answer and response thereto)

3. The transportation charges for the said shipment are claimed by the plaintiff on the basis of classification of the said articles as incendiary bombs, under Item 1820 of the freight Classification, and the rates applicable thereto. The charges paid by the defendant, through settlements made by the General Accounting Office, are on the basis of classification of the articles shipped as combination articles under Rule 18 of the freight classification and the rates applicable thereto.

(Par. 6 of petition, admitted by defendant's answer).

116 4. On the basis claimed by plaintiff, and the court's decision in *Union Pacific Railroad Company* v. *United States*, No. 49505, the balance due the plaintiff, as reported by the General Accounting Office, is $28,561.93.

(Par. 3 of plaintiff's statement of facts for admission, and defendant's response thereto).

The issue in this case is identical with the issue tried in the *Union Pacific* case, 125 C. Cls. 390, whether incendiary bombs filled with NP or PT1 incendiary gels, but without bursters and fuzes, should be classified and rated as incendiary bombs, as contended by the plaintiff, or as combination articles under Rule 18 or by analogy to other lower rated articles under Rule 17 of the freight classification, as contended by the General Accounting Office. The *Union Pacific* case was decided on April 7, 1953, on the issue of liability. The defendant filed a motion for a new trial which was overruled on July 13, 1953. Final judgment for the plaintiff was entered on November 3, 1953. There was no application for certiorari. An appropriation was made for payment of the judgment and it has been paid.

In a similar case, *Southern Pacific Company* v. *United States*, No. 49628, judgment for the plaintiff was entered on May 4, 1954, on a stipulation. 128 C. Cls. 773. That judgment likewise was reported for appropriation and has been paid.

The plaintiff in this case is entitled to judgment for the amount stated above which is the amount due, as reported by the General Accounting Office, on the basis of the court's decision in the *Union Pacific* case.

LAWRENCE CAKE,
RAYMOND A. NEGUS,
Attorneys for Plaintiff.

117 In the United States Court of Claims

Nos. 104-54 and 250-54

THE BANGOR AND AROOSTOOK RAILROAD CO., PLAINTIFF

v.

THE UNITED STATES, DEFENDANT

THE SEABOARD AIR LINE RAILROAD CO., PLAINTIFF

v.

THE UNITED STATES, DEFENDANT

AFFIDAVITS ATTACHED TO BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS OR FOR SUMMARY JUDGMENT—Filed April 1, 1955

118 EXHIBIT 1

AFFIDAVIT

ARLINGTON COUNTY,
State of Virginia, ss.

I, Sidney Katz, being duly sworn do depose and say—

I am an employee of the Department of Army and assigned to the Office Chief Chemical Officer, Materiel Division, Procurement Branch, in connection with procurement and shipment of Chemical Corps materiel.

I have been so employed since the year 1944. As part of my duties I have had occasion to familiarize myself with and have been engaged in the procurement of fire bombs (gasoline tank type).

In connection with the procurement of aforementioned fire bomb, said bomb was and is received by the Chemical Corps from its contractors as a fire bomb less filling (gasoline and napalm). The napalm thickener was and is shipped separate and apart from the bomb body to the Air Force by the Chemical Corps.

(S.) SIDNEY KATZ.

Sworn to before me this 30th day of March 1955.

(S.) EVELYN W. ZIMMERMAN,
Notary Public.
(SEAL)

My Commission Expires April 1st, 1956.

119 EXHIBIT 2

STATE OF VIRGINIA,
County of Arlington, ss.

AFFIDAVIT

JOHN A. MCCONNELL being first duly sworn on oath deposes and states:

1. That I am and have been employed in the Office of the Chief of Transportation, Freight Traffic Division, Rate Negotiation Branch, Classification Section since June 1945; that I am Assistant Chief of the Classification Section, which is responsible for handling all matters pertaining to the proper freight classification of all materials shipped by the Department of the Army;

2. That I have examined the official files of the Army which contain the following letter of 4 May 1945 from the Official Classification Committee:

120 OFFICIAL CLASSIFICATION COMMITTEE
143 Liberty Street
New York, N. Y.

May 4, 1945
in your reply refer to WSF 429
"Incendiary Bombs filled with Napalm
(soap and gasoline)

"Commanding Officer
NY Chem Warfare Proc Div.
292 Madison Avenue
New York, N. Y.

ATTENTION: Lt. W. J. Hanrahan, Transp. Officer

Dear Sir:

"This will acknowledge receipt of your letter even date, file SPCYN (T) 471.6 regarding incendiary bombs filled with napalm.

"This will confirm advice given to your Mr. Uecker by telephone on November 23, 1943, that these incendiary bombs filled with napalm (soap and gasoline) were ratable by analogy as Empty Aerial Bombs, Item 1895 of the Classification.

"Our record indicates that these incendiary bombs consisted of a steel tube containing napalm, but were not a finished bomb in that they needed a powder charge and primer and that they were not dangerous.

Yours truly,

OFFICIAL CLASSIFICATION COMMITTEE
Member"

jmw

3. That I am advised that the shipments involved in *Bangor and Aroostook Railroad Company* v. *The United States*
121 (No. 104-54) and in *Seaboard Air Line Railroad Company* v. *The United States* (No. 250-54) all took place during the year 1944.

4. That my examination of the official files of the Army shows that the 1943 telephone ruling of the Official Classification Committee described in the text of the 4 May 1945 letter, set forth in paragraph 2 above, was in effect at least through the year 1944 and was not rescinded or repudiated by the Official Classification Committee until sometime after 1944.

5. That on the basis of my experience in the transportation field and from my personal knowledge I know: (a) that the various classification committees prepare the Consolidated Freight Classification; (b) that it is not unusual for any shipper who is in doubt as to the appropriate classification rating applicable to his shipment to get in touch with the classification committee for its opinion and ruling as to the appropriate classification rating; and (c) that at the time the shipments involved in these cases were made, the Army as a shipper frequently requested such rulings from the classification committee.

(S.) JOHN A. MCCONNELL.

Subscribed to and sworn before me this the 29th day of March 1955.

(S.) WALTER E. SCOTT,
Notary Public.

(SEAL)

My Commission Expires March 10, 1956.

122 ARGUMENT AND SUBMISSION OF CASES.

On May 2, 1955, the cases were argued and submitted together on plaintiffs' motions for judgment on the pleadings or for summary judgment by Mr. Lawrence Cake for the plaintiffs and by Mr. Morton Hollander for the defendant.

123 In the United States Court of Claims

No. 42-54

THE WESTERN PACIFIC RAILROAD COMPANY

v.

THE UNITED STATES

No. 104-54

BANGOR AND AROOSTOOK RAILROAD COMPANY

v.

THE UNITED STATES

No. 250-54

SEABOARD AIR LINE RAILROAD COMPANY

v.

THE UNITED STATES

SUPPLEMENTAL AFFIDAVITS ATTACHED TO BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS OR FOR SUMMARY JUDGMENT—Filed May 2, 1955

124 EXHIBIT 1

STATE OF NEW YORK, COUNTY OF RENSSELAER, CITY OF TROY

WALTER H. BAUER, being duly sworn deposes and says: "I am a physical chemist, Professor of Physical Chemistry at Rensselaer Polytechnic Institute and head of the physical chemistry division of the chemistry department. My educational background
125 includes Doctor of Philosophy from the University of Wisconsin.

During the second World War I was assigned to the Chemical Corps Technical Command at Army Chemical Center, Maryland. My work was to assess the value of incendiary materials and to provide technical means of ascertaining the quality of thickeners for hydro-carbon oils to be used in incendiary manufacture.

Since the war I have been consultant for the Chemical Corps at various periods and have been continually under contract with the Chemical Corps to study the properties of agents similar to napalm. I have acted as a private consultant concerning napalm for Standard of Indiana and Phipps Products Company.

Napalm came into use about 1941. Since then, and up to the present time, I have been engaged in the development of napalm and similar products.

At Edgewood Arsenal my duties were to determine the value, relative value of various incendiary materials. I obtained data leading to specifications for the preparation of inflammable gels for bomb fillings and for flamethrower use. I visited factories preparing bomb fillings and factories making napalm, the thickener for napalm gel. The specific nature of my work under contract with the Chemical Corps has been the study of the reasons for the properties of thickeners used in making inflammable oils
126 as far as their molecular structure was concerned.

I have previously been called as an expert witness in a case before the Court of Claims concerning the question of the nature of napalm. The question involved whether napalm was a soap or was a chemical otherwise undesignated by name. This action was brought by a group of railroads against the Government over a matter concerning the rates of shipment of napalm thickener. The attorney for the Government was Mr. Dibble. It was approximately five years ago, and is described as Case No. 49168, Union Pacific R. R. vs. the United States.

Napalm gel which is used in filling bombs are mixtures of non-inflammable material consisting of mixed aluminum soaps and combustible liquids such as gasoline. Napalm gel consisted of a mixture of aluminum soaps (napalm) and gasoline. This mixture was used because of its sticky properties and because of its comparatively slow burning rate. The mixture itself is not self-igniting. In use it requires that an igniting material of incendiary material be supplied with the napalm gel. Napalm gel bombs are steel containers filled with napalm gel, the mixture of soap and gasoline referred to previously. This mixture will ignite only if a match or powder, or burning powder, or other incendiary material is supplied. This is supplied in practice by the
127 addition of a burster placed in a well in the bomb.

Therefore the characteristics of a napalm-gel filled bomb are similar to those of a steel container filled with gasoline, with the exception that the napalm gel filling does not flow as readily as gasoline and if ignited does not burn as rapidly as gasoline.

I would like to distinguish between an incendiary material and an inflammable material. An incendiary material is an agent that can cause or initiate combustion or burning. An inflammable material is a material that is capable of being ignited, or burning. Examples of these are as follows: An incendiary material is a match or spontaneously inflammable solids such as phosphorus, sodium; and liquids such as carbon disulphid. Examples of inflammable materials are given by gasoline and petroleum oils.

Now gasoline is inflammable but will not spontaneously ignite; it requires the presence of a flame or other source of ignition. The characteristics of napalm gel made from napalm soap and gasoline

are similar to those of gasoline itself. For instance, the vapor pressure and the flash-point are very closely the same for the napalm gel and gasoline. On this account it is of equal difficulty or ease to ignite gasoline or napalm gel.

Napalm gel in bombs does not have any incendiary quali-
128 ties. It is stable indefinitely, having the same characteristic with respect to ignitibility as a similar container full of gasoline.

Although I understand the bomb formerly was called in Army nomenclature an incendiary bomb, it is not in fact incendiary until the burster is inserted. I further understand that the Army nomenclature has now been corrected so that the term incendiary bomb refers to a *completed* bomb containing all components, including the burster and fuse.

The hazards in transporting napalm-gel filled bombs are similar in nature to those in transporting gasoline in steel containers, with one exception. The thickened characteristic of the gasoline in napalm gel makes it less likely to leak from small holes or to flow rapidly out of an orifice in the steel container, if one should occur. It is thus essentially of the same order of hazard in shipping as gasoline, if anything possibly less hazardous in shipping.

Actually no chemical combination occurs between the aluminum soap and gasoline; the mixture called napalm gel is a physical mixture. It is similar in nature to a brush heap consisting of the molecules of aluminum soap over which is poured the liquid, which does not dissolve in the brush heap. This brush heap, which we are speaking of figuratively, of napalm, causes the gasoline to flow less readily than it would when pure and thus the gel has the property of thickness and stickiness. Because the mixture is
129 a physical mixture, the properties of the gasoline in the napalm gel are essentially unchanged as to chemical nature in which inflammability is involved. The flow properties of the mixture are of course changed; these are physical properties.

For the common industrial uses of napalm and similar aluminum soaps, the napalm is mixed with oils and other materials at the point of use.

Materials similar to napalm have been shipped industrially as soap; for instance, aluminum stearate, and at the rates of soaps. It may be noted that the napalm-gel filled steel bombs were commonly shipped in wooden cases, which would hardly be expected if they were incendiary in nature.

In summary, the napalm content of napalm gel is not incendiary. The material is similar to a sodium hand soap in inflammability. This means it is not easy to ignite. A match applied to napalm powder will not cause it to burn. It must be heated, and after application of heat and igniting, or incendiary agent, napalm soap

will burn. It is less easily ignitable than the ordinary petroleum oil such as diesel oil. The mixture of soap and gasoline called napalm gel is itself of similar nature to gasoline as to inflammability. Like gasoline it is not incendiary; that is, it is not an agent that causes combustion. Its ease of ignition or flashpoint is like that of gasoline. In short, the hazards in shipping napalm-gel filled bombs without bursters are similar to or less than the hazards in
130 shipping gasoline.

(S.) WALTER H. BAUER.

State of New York, County of Rensselaer.

Subscribed and sworn to before me this 29 day of March 1955.

[SEAL] [S] Kenneth J. Plant,
KENNETH J. PLANT,
Notary Public, State of New York,
Residing in Rensselaer County.

Commission expires March 30, 1955.

EXHIBIT 2

United States Court of Claims

No. 42-54

THE WESTERN PACIFIC RAILROAD COMPANY, PLAINTIFF

v.

THE UNITED STATES OF AMERICA, DEFENDANT

AFFIDAVIT

PITTSBURGH, PENNSYLVANIA, ss.

I, Dr. Robert W. Van Dolah, being duly sworn on oath, depose and say:

I. That I am the Chief, Division of Explosives Technology, Region V, Bureau of Mines, in the Department of the Interior, that I received the degree of Doctor of Philosophy in Organic Chemistry from the Ohio State University in 1943; that I was the head of the Organic Chemistry Branch and the head
131 of the Chemical Division of the Naval Ordnance Test Station from 1946 through 1954.

II. That, among other official duties, the Division in which I am presently employed is charged with the testing of explosives

and conducting research on explosives and combustion phenomena. Similar work is done by this Division under contract with the military branches of the Government in connection with related subjects.

III. That I am familiar with Napalm gel and its uses through study and through work on materials related thereto, including its use as a filler in an incendiary bomb.

IV. That an incendiary is an agent capable, in itself, of igniting materials.

V. That an incendiary bomb is a bomb designed to burn rather than detonate in use.

VI. That incendiary ammunition contains a pyrotechnic material (such as white phosphorus) which is capable of self-ignition and burning or contains a fuze and igniter capable of igniting the main charge.

VII. That the white phosphorus charge used in an incendiary bomb, as in its final form and suitable for its intended purpose, is an incendiary which, as such, is capable of self-ignition and which ignites the napalm or similar gel that may be contained in the bomb.

VIII. That napalm gel in itself is not an incendiary.

132 IX. That napalm gel is merely a gelled mixture of hydrocarbons.

X. That napalm gel has no incendiary characteristics and is not capable of self-ignition or spontaneous combustion.

XI. That a container of napalm gel need not be handled differently from a container of gasoline in the interests of safety and is not considered an incendiary.

(S.) ROBERT W. VAN DOLAH.

Subscribed and sworn to before me, by the affiant above named, this 31 day of March, 1955.

[SEAL] (S.) JOSEPH K. LALOR,
Notary Public.

My commission expires January 7, 1959.

JOSEPH K. LALOR, N. P.

EXHIBIT 3

COUNTY OF NEW YORK, STATE OF NEW YORK, *ss.*

AFFIDAVIT

I, J. D. Sherson, being duly sworn, depose and say:

1. I am a member of the Official Classification Committee, with offices at 1 Park Avenue, New York City.

2. I am empowered to examine the official files of our Committee.

3. I have examined the official files of our Committee and find that on May 4, 1945, Mr. W. S. Flint dictated and had
133 mailed, on behalf of the Official Classification Committee, the following letter:

OFFICIAL CLASSIFICATION COMMITTEE

143 Liberty Street, New York, N. Y.

May 4, 1945.

In your reply refer to WSF 429.

Incendiary Bombs filled with napalm (soap and gasoline).

Commanding Officer,
NY Chem Warfare ProcDiv.,
292 Madison Avenue,
New York, N. Y.

Attention: Lt. W. J. Hanrahan, Transp. Officer.

DEAR SIR: This will acknowledge receipt your letter even date, file SPCYN(T)-471.6 regarding incendiary bombs filled with napalm.

This will confirm advice given to your Mr. Uecker by telephone on November 23, 1943, that these incendiary bombs filled with napalm (soap and gasoline) were ratable by analogy as Empty Aerial Bombs, Item 1895 of the Classification.

Our record indicates that these incendiary bombs consisted of a steel tube containing napalm, but were not a finished bomb in that they needed a powder charge and primer and that they were not dangerous.

Yours truly,

OFFICIAL CLASSIFICATION COMMITTEE,

Member.

jmw.

134 3. The telephone ruling of November 23, 1943, referred to in the May 4, 1945 letter, was in effect at least until June 26, 1945.

(S.) J. D. SHERSON.

Subscribed and sworn to before me this 11th day of April 1955.

[SEAL] (S.) RUTH C. LEITZ,

Ruth C. Leitz,
Notary Public.

Notary Public,
State of New York.
No. 41-2305900
Qualified in Queens County.

Term expires March 30, 1957.

EXHIBIT 4

COUNTY OF NEW YORK, STATE OF NEW YORK, *ss.*

I, Jack A. Dorland, being duly sworn, depose and say:

1. I was a Transportation Officer assigned to the New York Chemical Warfare Procurement District during 1945. I have been shown and have examined a photostat of a letter of May 4, 1945, from the Official Classification Committee addressed to the attention of Lt. W. J. Hanrahan, who was employed in my office under my supervision. That letter states that bomb bodies filled with napalm gel are ratable as Empty Aerial Bombs, Item 1895.

135 2. Mr. Charles H. Uecker, who is mentioned in the second paragraph of the May 4, 1945 letter, was also employed in my office and under my supervision at that time. In November 1943, in the course of Mr. Uecker's official duties it became necessary to ascertain the appropriate classification rating at which bomb bodies filled with napalm gel were to be carried by the railroads. Following the established practice in cases where there is some doubt as to the appropriate classification, Mr. Uecker got in touch with the Official Classification Committee to obtain a ruling from them on the question. He obtained this ruling over the telephone from Mr. Flint, a member of the Official Classfication Committee, on November 23, 1943. The ruling so obtained was to the effect that these steel bomb bodies filled with napalm gel were ratable by analogy as Empty Aerial Bombs, Item 1895.

3. On May 3, 1945, Lt. Hanrahan addressed a letter to the Official Classification Committee to the attention of Mr. Flint, asking the Committee to confirm in writing the fact that the Item 1895 rating applied to napalm filled steel bomb bodies.

This May 3, 1945 letter was signed for me by Lt. W. J. Hanrahan. On the following day, May 4, 1945, the Official Classification Committee responded to the letter of May 3, 1945, and confirmed in writing the fact that steel bomb bodies filled with napalm gel were ratable by analogy as Empty Aerial Bombs,

136 Item 1895. This May 4, 1945 letter is the same letter I referred to in the first paragraph of this Affidavit.

[S.] JACK A. DORLAND.

Subscribed and sworn to before me this 13th day of April 1955.

[S.] GEORGE W. FERGUSON,
George W. Ferguson,
Notary Public, State of New York,
Qualified in Rockland County.

No. 44-1196525

Certificate filed with N. Y. County Clerks and Registrar's office

Commission expires March 30, 1957.

GEORGE W. FERGUSON.

EXHIBIT 5

COUNTY OF NEW YORK, STATE OF NEW YORK, ss.

AFFIDAVIT

I, Charles H. Uecker, being duly sworn, do depose and say:

1. I was an employee of the Department of Army, assigned to the Transportation Division of C. W. S. for the period from 1943 through 1945.

2. My duties in the Transportation Office required me to ascertain under the supervision of the Officer in Charge the ap-
137 propriate classification ratings applicable to shipments of Army materials, whenever there was some doubt as to the proper classfiication.

3. I have been shown and have just examined a copy of a letter of May 4, 1945 from the Official Classification Committee, stating that bomb bodies filled with napalm gel were rated by analogy as Empty Aerial Bombs, Item 1895.

4. I am familar with the circumstances leading to the May 4, 1945 letter: In November 1943, in the course of my official duties in the Division of Transportation, it became necessary for me to ascertain the appropriate classification rating at which these bomb bodies filled with napalm gel were to be carried by the railroads. Following the established practice in such cases, I got in touch with the Official Classification Committee to obtain a ruling from them on the question. I obtained this ruling over the telephone from Mr. Flint, a member of the Official Classification Committee, on November 23, 1943. The ruling so obtained was to the effect that these steel bomb bodies filled with napalm gel were ratable by analogy as Empty Aerial Bombs, Item 1895.

On May 3, 1945, my attention was drawn to the fact that there was nothing in writing confirming the telephone ruling I obtained in November 1943. On May 3, 1945, I accordingly dictated a
138 letter, over Lt. W. J. Hanrahan's signature, addressed to the Official Classification Committee to the attention of Mr. Flint, asking the Committee to confirm in writing the fact that the Item 1895 rating applied to napalm filled steel bomb bodies.

This May 3, 1945 letter was signed by Lt. Hanrahan for Capt. Jack A. Dorland and mailed to the Classification Committee on the same date.

On the following day, May 4, 1945, the Official Classification Committee responded to my letter of May 3, 1945, and confirmed in writing the fact that steel bomb bodies filled with napalm gel were ratable by analogy as Empty Aerial Bombs, Item 1895. This May 4, 1945 letter is the same letter I refer to in the third paragraph of this Affidavit.

[S.] CHARLES H. UECKER.

Subscribed and sworn to before me this 11th day of April 1955.
[SEAL]

[S.] MILTON H. CROSS,
Notary Public State of New York.
No. 52-5865000
Qualified in Suffolk County

Certificates filed with New York County Clerk.

Term expires March 30, 1956.

139 In the United States Court of Claims

No. 42-54

THE WESTERN PACIFIC RAILROAD COMPANY

v.

THE UNITED STATES

No. 104-54

BANGOR AND AROOSTOOK RAILROAD COMPANY

v.

THE UNITED STATES

No. 250-54

SEABOARD AIR LINE RAILROAD COMPANY

v.

THE UNITED STATES

Mr. Lawrence Cake for the plaintiff.

Mr. Morton Hollander, with whom was *Mr. Assistant Attorney General Warren E. Burger*, for the defendant. *Mr. Martin E. Rendelman* was on the briefs.

OPINION ON PLAINTIFFS' MOTIONS FOR JUDGMENT ON THE PLEADINGS OR FOR SUMMARY JUDGMENT—June 7, 1955

LARAMORE, *Judge*, delivered the opinion of the court:

These cases present the same questions which the court considered and answered in the case of *Union Pacific Railroad Company* v. *United States*, 125 C. Cls. 390. A reconsideration of the question of classification of the articles as "bombs or mines" under item 1820 of Consolidated Freight Classification No. 16, leads us to the same conclusion. The facts are the same and no purpose would be served by reciting again the historical facts in our former opinion and the facts in the instant case.

140 The Government's contention that these cases should be suspended pending the referral to the Interstate Commerce Commission for a determination as to the reasonableness of the rates, is without merit. The statute of limitations has run against the Government's right to have the reasonableness determined. *A. J. Phillips Company* v. *Grand Trunk Western Railway Company*, 236 U. S. 662; *Midstate Horticultural Co., Inc.* v. *Pennsyl-*

vania Railroad Co., 320 U. S. 356; *United States* v. *Director General*, 80 I. C. C. 143, 150-151; *United States* v. *Southern Railway Company*, 286 I. C. C. 203.

The defendant contends that a question of fact exists as to whether the plaintiffs Bangor and Aroostook Railroad Company and Seaboard Air Line Railroad Company are estopped from claiming the higher rate. The defendant says these plaintiffs are estopped from recovering the higher rate for some of the shipments because the Official Classification Committee, which is "a creation of the railroads," on November 23, 1943, orally and subsequently in writing, informed the Army that the proposed shipments without bursters or fuses were not dangerous and ruled that they should be rated by analogy as empty aerial bombs under item 1895, which was a lower rate than item 1820. This ruling was subsequently rescinded and admitted to be a mistake by the Committee and also by the defendant in the *Union Pacific Railroad* case, *supra*. We do not see how the defendant could reasonably have been misled or injured by the ruling, especially when the plaintiffs promptly billed the defendant at the first-class rate and the defendant paid that rate and continued to make the shipments at that rate. Moreover, the only cases cited by the defendant on the availability of the defense of estoppel to the Government in these railroad cases are *Oregon-Washington Railroad & Navigation Company* v. *United States*, 255 U. S. 339 and *Western Pacific Railroad Company* v. *United States*, 255 U. S. 349. Both of these cases involved the acceptance by the railroad of shipments at the lower rate and gross acquiescence in the shipments at that rate. The Supreme Court held that the railroads were precluded from recovering the higher rate because of their gross acquiescence. There is no acquiescence in these cases. The railroad billed and was paid the higher rate and suit was commenced shortly
141 after the Government set off the sums here in suit against money otherwise due the plaintiffs. See *St. Louis, Brownsville & Mexico Railway Company* v. *United States*, 268 U. S. 169.

Plaintiffs' motions for summary judgment are granted. Judgment will be entered for The Western Pacific Railroad Company in the amount of $14,280.06. Judgment in Bangor and Aroostook Railroad Company and Seaboard Air Line Railroad Company is suspended pending the filing of a stipulation of the exact amount due, or upon failure of filing a stipulation within 45 days the cases will be referred to a commissioner of this court for a report on the amounts due.

It is so ordered.

WHITAKER, *Judge*, and LITTLETON, *Judge*, concur.

MADDEN, *Judge*, dissenting.

"Give a dog a bad name and hang him" is a saying of the people, but it is not a legal maxim. It is hard to think of a name for the inert, non-incendiary objects here involved other than "incendiary bombs." That is what the objects were made for; if they are not used for that purpose they must be scrapped. If a sightseer in a factory asked what those queer-shaped objects were, the answer would be "incendiary bombs." But if he then started to run, he would be given further reassuring information about them.

In law, as in life, words are used for a purpose, and a mere name may be all that is needed in one situation while in another many qualifying words will have to be appended to the name. Where, as in the instant case, the whole reason and justification for charging high rates for the carriage of objects is their incendiary and extra-hazardous character, the mere name is not sufficient to put goods in their proper classification. If we go by the name, our Government and our taxpayers are made to pay for insurance against non-existent risks, and the railroads are getting something for nothing.

In other branches of the law such as laws forbidding the transportation or storage of explosives, a court would make short work of a case involving explosives that would not explode. I see no reason why the law of freight rates should be less rational.

142 "Reason is the life of the law." If the reason for the high freight rate is the incendiary quality of the freight, and if the freight does not have the incendiary quality, the reason for the high rate vanishes and the rate should vanish with it.

The plaintiffs do not attempt to justify the high rates on the basis of high hazards. They simply say, it is so written in the tariffs. Incendiary bombs, high rates. These are incendiary bombs. *Ergo*, high rates. This kind of pure literalism has no place in the law.

I would dismiss the plaintiffs' motion for summary judgment and let the Government prove, if it can, that the objects in question are not incendiary and that to name them incendiary bombs for the purpose of these tariffs is to misname them. Our *Union Pacific* case is, of course, not *res adjudicata* of this case which involves other plaintiffs. If we should be persuaded in this case that our decision in that case was wrong, we would regret that error, but not repeat it.

JONES, *Chief Judge*, joins in the foregoing dissent.

143 PROCEEDINGS FOLLOWING OPINION OF THE COURT

On July 6, 1955, the defendant filed a motion for rehearing.

On October 4, 1955, the court entered the following order on said motion:

ORDER

These cases come before the court on motions for rehearings, amendment of judgments or new trials under Rules 53 and 54 of the Rules of this court and, on consideration thereof,

IT IS ORDERED this fourth day of October, 1955, that said motions be and the same are overruled as follows:

* * * * * * *

42-54 The Western Pacific Railroad Company
104-54 Bangor and Aroostook Railroad Company
250-54 Seaboard Air Line Railroad Company
Defendant's motion.

* * * * * * *

By the COURT
(S.) MARVIN JONES,
Chief Judge.

144 In the United States Court of Claims

No. 104-54

BANGOR AND AROOSTOOK RAILROAD COMPANY

v.

THE UNITED STATES

ORDER RE JUDGMENT—November 8, 1955

On June 7, 1955, the court rendered an opinion holding that plaintiff was entitled to recover but suspended the entry of judgment pending the filing of a stipulation by the parties showing the amount due plaintiff in accordance with the opinion of the court.

On October 24, 1955, said stipulation was filed signed on behalf of plaintiff by its attorney of record and on behalf of the defendant by Assistant Attorney General Warren E. Burger, in which it is stated that the amount due plaintiff is $73,056.95.

NOW, THEREFORE, it is ordered this eighth day of November,

1955, that judgment be and the same hereby is entered in favor of plaintiff in the sum of seventy-three thousand fifty-six dollars and ninety-five cents ($73,056.95).

By the COURT
MARVIN JONES,
Chief Judge.

145 In the United States Court of Claims

No. 250-54

SEABOARD AIR LINE RAILROAD COMPANY

v.

THE UNITED STATES

ORDER RE JUDGMENT—November 8, 1955

On June 7, 1955, the court rendered an opinion holding that plaintiff was entitled to recover but suspended the entry of judgment pending the filing of a stipulation by the parties showing the amount due plaintiff in accordance with the opinion of the court.

On October 24, 1955, said stipulation was filed signed on behalf of plaintiff by its attorney of record and on behalf of the defendant by Assistant Attorney General Warren E. Burger, in which it is stated that the amount due plaintiff is $28,561.93.

NOW, THEREFORE, it is ordered this eighth day of November, 1955, that judgment be and the same hereby is entered for plaintiff in the sum of twenty-eight thousand five hundred sixty-one dollars and ninety-three cents ($28,561.93).

By the COURT
MARVIN JONES,
Chief Judge.

146-147 Clerk's Certificate to foregoing transcript omitted in printing.

148 Supreme Court of the United States

[Title omitted]

ORDER ALLOWING CERTIORARI.—Filed January 23, 1955

The petition herein for a writ of certiorari to the United States Court of Claims is granted and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1955 376407 9013